(22,985)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 152.

SAMUEL W. CURRIDEN, APPELLANT,

vs.

FRANK L. MIDDLETON, HENRY S. BLACKMORE, AND WILLIAM G. ORR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 8, 1913.

In the Court of Appeals of the District of Columbia.

No. 2293.

SAMUEL W. CURRIDEN, Appellant,
vs.
FRANK L. MIDDLETON et al.

a Supreme Court of the District of Columbia.

In Equity. No. 29257.

SAMUEL W. CURRIDEN, Complainant,
vs.
FRANK L. MIDDLETON, HENRY S. BLACKMORE, and WILLIAM G. ORR, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed April 4, 1910.

In the Supreme Court of the District of Columbia.

In Equity. No. 29257.

SAMUEL W. CURRIDEN, Complainant,
against
FRANK L. MIDDLETON, HENRY S. BLACKMORE, and WILLIAM G. ORR, Defendants.

To the Supreme Court of the District of Columbia, holding an Equity Court:

The complainant states as follows:

1. The complainant, Samuel W. Curriden, who brings this suit in his own right, and all the defendants are citizens of the United States;

the complainant and the defendant, Frank L. Middleton, are residents of the District of Columbia, the defendant Blackmore is a citizen of New York and the defendant Orr is a citizen of Maryland.

2. During the year 1904 and many years prior thereto a personal friendship existed between the complainant and the defendant Middleton, which was maintained and developed by their social intercourse and common interest in many subjects. Said defendant was a patent attorney in the active practice of his profession. The complainant was engaged in various other business affairs, and by his personal labor and industry had accumulated a moderate fortune of about thirty-five thousand dollars, and had ample financial credit, which facts were well known to the defendant Middleton, in whose integrity and loyalty as a friend and in whose professional knowledge and skill as a patent attorney the complainant had entire confidence.

3. During the early part of October, 1904, the defendant Middleton, through the defendant Orr, who was then a stranger to the complainant, brought to the attention of the complainant a cer-
2 tain fluid called Aromaform and a certain apparatus intended as an automatic appliance in the use of said fluid, and represented to the complainant that said fluid was a powerful and valuable disinfectant, the invention of one Henry S. Blackmore; that said fluid and apparatus were patented; that the defendant Middleton was the agent of the owners of all the patents covering said fluid and apparatus, with power to make a sale of said patents and all rights thereunder and incident thereto; that there had been various complications of ownership; that previously to that moment it had been impossible to completely purchase said patents and rights and that there was a present opportunity to make such purchase which should not be neglected. Further to engage the interest and confidence of the complainant in the enterprise the defendant Middleton, through said defendant Orr, exhibited to the complainant a copy of a letter written and signed by Harvey W. Wiley, Chemist of the Agricultural Department of the United States, which letter is as follows:

DEPARTMENT OF AGRICULTURE,
BUREAU OF CHEMISTRY,
WASHINGTON, D. C.

I have in use one of the apparatus invented by Mr. Henry S. Blackmore for a disinfector and deodorizer.

By this invention four distinct and important results are secured:

1. It impregnates the water with aerated disinfectant.

2. It disinfects the soil and urinary deposits from the closet or urinal to the sewer.

3. It disinfects the room or apartments with aerated disinfectant escaping at exposed points.

4. It leaves communicating with the atmosphere in the basin and trap of the urinal a liquid impregnated with disinfectant.

From the above considerations it seems to me that this is a most useful and simple process, and one which can be easily introduced at

a low rate of expense into private houses and public buildings with great benefit.

H. W. WILEY.

4. The complainant at first declined to take any part in the enterprise because of his ignorance of chemistry and want of skill or knowledge in matters of mechanical devices, but his objections were overcome by further representations then made to him by
3 the defendant Middleton as follows: That the patentee, the defendant Blackmore, stood very high in his profession as chemist; that the patents carried very broad and exclusive claims; that said defendant Middleton was agent of Blackmore, and of Orr and certain parties in Baltimore holding certain rights by assignment from Blackmore under said patents; that he had a standing offer of $5,000 for such rights for the cities of Minneapolis and St. Paul; that about 500 of said automatic machines were then in use in the District of Columbia and orders had been received for about 200 more; that the said Baltimore parties and Orr had given certain responsible business men in Washington an option to purchase their said rights, which option was about to expire, but that, as a favor to the complainant and his friend, Joseph E. Crandall, also a friend of the defendant Middleton and who also listened to the defendant Middleton's presentations aforesaid, such option would not be renewed; that the formula of said fluid was known only to Blackmore, its inventor, patentee and sole owner, and the fluid could be made at a certain chemical establishment in New York City, where, under Blackmore's own eye, the various ingredients were assembled and the fluid compounded; that because of Blackmore's financial needs at that time and of disagreements among the Baltimore parties aforesaid all the rights under said patents could be purchased through the defendant Middleton as agent of the said owners and upon terms decidedly favorable to the purchaser; that such purchaser would thus secure, by such acquisition and unification of all interests, a property which the defendant Middleton described as the most valuable franchise that ever passed through his office; that the complainant and Crandall ought to act promptly in securing said rights while Blackmore was offering the same at very low rates during his temporarily pressing financial needs; that immediate payment of only a small part of the purchase price would be required and a considerable part thereof would be accepted in stock of any company that complainant and Crandall might organize to carry on the enterprise; and that a true and correct statement of the workings of said apparatus and of the efficiency and effects of said fluid was as follows:

"An attractive transparent chamber with a nick*le*-plated cap or top, which is attached to the down-pipe through which the water passes from the flushing tank to the closet bowl or urinal beneath. In the transparent chamber is placed Aromaform—a disinfecting, sterilizing germicide. Every flushing action has the effect of drawing air through the Aromaform. In its passage the air is thor-
4 oughly impregnated with the disinfecting quality and odor of the material; it thence passes into the down-pipe, where

it aerates the flushing water, and as this water is discharged into the bowl the room is disinfected and deodorized, while the water in the bowl is thoroughly sterilized."

5. Yielding to the solicitations of the defendant Middleton and relying upon his representations aforesaid and other representations to the same end, by him made and believing all of them to be true, the complainant, after an agreement between himself and Crandall to make the purchase on their joint account, agreed with the defendant Middleton to make such purchase of all said rights, payment to be part in cash and part in stock of a company to be organized by them under the laws of the District of Columbia and capitalized at $500,000, the terms of the purchase to be as follows:

Rights purchased.	Cash and notes.	Stock.	Total.
From H. S. Blackmore for 35 per cent, with right to buy remaining 65 per cent. of all manufacturing rights on terms stated	$3,500.00	.....	$3,500.00
From Baltimore parties of all selling rights outside the District of Columbia	20,000.00	$20,000.00	40,000.00
From W. G. Orr, selling rights to D. C.	7,500.00	7,500.00	15,000.00
Totals	$31,000.00	$27,500.00	$58,500.00

In pursuance of the agreement aforesaid the contemplated company was duly incorporated under the laws of said District by the name of American Automatic Disinfectant Company.

6. On October 27, 1904, the complainant paid said defendant the sum of $200, and on the next day the further sum of $1,300, for which the defendant Middleton receipted in writing signed by him "Frank L. Middleton, Agent," and the complainant paid further sums of money and made his promissory notes and incurred indebtedness amounting in all to about $40,000 in the purchase of said rights and in the performance of said agreement with the defendant Middleton and in the purchase for $8,000 in money of Blackmore's remaining 65 per cent. interest—at all times relying upon the representations made by the defendant Middleton as aforesaid, which said rights the complainant and said Crandall duly transferred to the said company.

7. The said company thereupon attempted to engage in the main business for which it had been created, being the manufacture and sale of the fluid and automatic apparatus aforesaid. A suitable building was secured by lease and therein, under the supervision and direction of said Blackmore, a laboratory equipment was purchased and put in place, to the end that the parts of the apparatus procured from various manufacturers elsewhere could be therein properly assembled and, further, that therein Aromaform could, under all necessary conditions, be economically compounded under said Blackmore's instructions in conformity to the correct

formula, the right to use the name Aromaform having been also acquired by said Company from said Blackmore.

8. Mr. Frank S. Bright became president, the complainant Curriden treasurer, Joseph E. Crandall general manager, the defendant Middleton a trustee and the defendant Blackmore a trustee and consulting chemist of the Company.

An elaborate prospectus was prepared and printed and other arrangements necessary to make and vend the Aromaform and apparatus were made by the Company.

9. Efforts were made to increase the local business in Washington, although it was found that the number of machines in place in that city was much less than had been represented by the defendants, and of these a large proportion had been the subject of complaint for reasons which had been kept concealed from the complainant and Crandall.

10. A purchase of the rights for New England was considered and nearly consummated by Boston parties of experience in the sale of disinfecting appliances, who placed full faith in the representations of the defendants, and they offered advantageous terms for the rights in that territory.

11. By these and other prospective purchasers of rights confirmation was asked of the representations made by the Company in its printed matter, based on the statements of the defendants, as to the efficiency of the fluid and apparatus for the purposes stated by them, and the complainant, with the general manager, Crandall, was compelled to set on foot inquiries and to have tests made concerning the Aromaform, the result of which proved that the fluid, with the apparatus, was wholly ineffective and utterly worthless for the uses for which it was designed.

12. The complainant while thus heavily distressed and burdened also became broken down with sickness and after he had exhausted his means, credit and health he gave up the struggle and was
6 obliged to resign as treasurer of the Company. Mr. Bright also resigned as president; Mr. Crandall vainly continued for only about a year. The defendant Middleton became the president and at the next stockholders' meeting caused the complainant to be dropped from the board of trustees and thereafter the defendant Middleton became and continued, down to the present time, to be in sole and complete control of the Company and all of its assets and property of every kind and of all of its documents and other records.

13. The complainant in January, 1906, being incapacitated by his labors in the premises and his disappointment and anxiety caused by the unfortunate results of his reliance upon the defendant's misrepresentations aforesaid, and also being in ill health and wholly exhausted in his property and credit, and utterly unable to meet the remaining obligations signed by him and unpaid, sent the following letter to Crandall:

JANUARY 3, 1906.

MY DEAR MR. CRANDALL: I repeat to you my proposal of December 28th last and will extend the time for its acceptance to ten days

from this date, with privilege of renewal if desired not exceeding thirty days from date. The proposal is as follows:

The 737 shares of A. A. D. Co. stock in your name which belongs to me as collateral, together with 486 shares of like stock in my own name, I agree to surrender to you on your order at any time within ten days from this day on the following conditions:

1. That all unpaid notes signed by me and given on account of purchase, which I think are as follows, viz:

J. C. Lewis	for	$400	and	interest.
W. G. Orr	"	1440	"	"
Do.	"	3000	"	"
Do.	"	750	"	"
— — Fowler	"	1875	"	"
F. L. Middleton	"	2300	"	"
— — Thomas	"	151.20		

shall be returned to me cancelled and paid.

2. That the four accommodation notes of A. H. Galt to my order and amounting to $2,290 and interest shall be returned to me cancelled and paid, said Galt to agree that in consideration of the assignment to him by me of all indebtedness of the Company to me
7 for moneys advanced and for services to date he shall release all other claim- he may have against me in connection with this enterprise. I hereby agree to continue my endorsement of renewals of said notes from time to time as such notes may become due, the curtailment of each note not to be less than $50.

3. That the accommodation note of yourself to my order amounting to $800 be paid by you and cancelled.

4. That the several notes of the Company and of others discounted for the benefit of the Company bearing my personal endorsement be cancelled and paid.

The intent of this proposition being that I shall be at the earliest possible moment relieved of all liability of every sort for all obligations of mine now outstanding given by me in connection with the affairs of the American Automatic Disinfectant Company upon the surrender by me of all interests therein belonging to me, except the 300 shares, which are to remain in my hands.

Very truly yours, SAMUEL W. CURRIDEN.

Mr. J. E. Crandall.

14. On January 16, 1906, the secretary of the Company by letter informed Mr. Crandall that the foregoing offer of the complainant would be accepted, and on the same day Mr. Crandall by letter transmitted to the complainant a copy of the secretary's letter. The formal action of the Company was taken on January 18, as follows:

Meeting of the Board of Trustees of the American Automatic Disinfectant Company.

JANUARY 18, 1906.

Present all trustees save S. W. Curriden and Henry S. Blackmore, the president presiding.

On motion of F. S. Bright,

Resolved, That the Company, in consideration of the sum of one dollar to it in hand paid and other good and valuable consideration to it from S. W. Curriden, agrees to save said S. W. Curriden on any and all notes made by him for the benefit of said Company and now outstanding, and that as to said notes or as to any notes of said Company indorsed by said Curriden he shall for the future be considered as only an accommodation endorser or maker, and as rapidly
8 as said notes can be curtailed they shall be, and when finally paid they shall be returned to said Curriden. Put and carried.

On motion of F. S. Bright, it was further resolved that the note of Joseph E. Crandall for eight hundred dollars now held by the Commercial National Bank, on which S. W. Curriden is endorser, and certain notes of Alexander H. Galt, amounting to $2,290 and endorsed by said Curriden, having been given for the benefit of and to carry on said Company, shall be assumed by said Company and when curtailed shall be, when finally paid, returned to said Curriden; and that a certain note of W. G. Orr, of which said Curriden is maker, is the note of said Company, and that said Curriden as to said note is only an accommodation maker, and said Company agrees to save him harmless therefrom and when finally paid to return the same to said Curriden, said last named note being for the sum of $775 and being now held by the Farmers' and Mechanics' National Bank. Put and carried.

(Signed) ALEXANDER H. GALT.
J. E. CRANDALL.
F. S. BRIGHT.
CLAUDE N. BENNETT.
F. L. MIDDLETON.

Attest:
ALEXANDER H. GALT, *Secretary.*

15. The foregoing agreement was fully complied with by the complainant and all the acts thereby required of him were duly performed, but said Company, under the control and management of the defendant Middleton, has failed to perform said terms on its part required, but has on the contrary wholly failed to pay certain notes, which are substantially in the amounts following:

A. H. Galt at the Commercial National Bank $175, A. H. Galt at the Metropolitan National Bank $125, J. E. Crandall at the Commercial National Bank $450, W. G. Orr at the Farmers' and Mechanics' National Bank $650, Speare, Middleton & Speare at the American National Bank $400, and at the International Banking Company $200, making about $2,000 in all.

16. The notes last above mentioned being still outstanding and unpaid, on some of them the complainant has been sued and on others he is threatened with suit. The total sum of his liability in the premises, which by the acceptance by said Company of
9 the terms of said letter the Company was to assume, was about $13,000, which, if it had been taken care of by the Company, would have left the losses of the complainant about $30,000; but the Company became and now is wholly and hopelessly insolvent.

17. The complainant further charges that not only did the defendant Middleton fail to fully comply with his agreement signed on the 18th of January, 1906, and not only did he endeavor to make the losses by the notes aforesaid, amounting to about $2,000, fall upon the complainant in addition to his prior losses of about $30,000, but on the 13th day of May, 1908, he also caused to be presented to the complainant a demand for $6,080, alleged to be unaccounted for and due from him as late treasurer of the Company, and threatened him with a lawsuit to collect the same through E. Hilton Jackson, his attorney.

After investigation by the complainant it was shown to the defendant Middleton's attorney that none of the claim of $6,080 was due by the complainant, but that the accounts of the Company correctly stated would show an indebtedness to the complainant for cash advanced and not repaid him of $450.

But thereafter the defendant Middleton, for the continued purpose of intimidation, caused to be made another audit by a different set of experts, and upon the results of their incomplete and imperfect labors made a demand, reduced from the original one but amounting to $2,139.04.

Upon examination by the complainant of the papers which he was allowed to see on the occasion of this claim newly stated, it was at once shown to one of the experts that none of the $2,139.04 was due from the complainant, but that the $450 (less $150 from a clerical error in favor of the complainant) was due to him, being $300; and thereafter said claim was abandoned by its authors.

18. The complainant is informed and believes and charges that in the course of the events hereinbefore recited the most essential misrepresentations made to him and the said Crandall by the defendants Middleton, Blackmore and Orr were in substance and effect as follows:

(*a*) That the said Middleton was interested in the sale of the patent rights of Blackmore aforesaid only as an attorney expecting a moderate and reasonable fee, whereas in truth and in fact the said Middleton was then otherwise interested in the said patent rights and had formed a plan to receive a large portion of the moneys from any sale which might be made thereof to the complainant.

10 (*b*) That in going forward with the new enterprise deferred payments to all parties could be met from sales of rights to use the Aromaform and apparatus, which sales were already in sight; that a standing offer to purchase for $5,000 the rights for Minneapolis and St. Paul had been received, whereas no such offer had been made; that for New York and Pittsburg and other places

there were negotiations pending which could be quickly consummated; that in particular there was good reason to be sure that rights could be sold for $45,950 at the places and prices following, namely: Wilmington, Del., $500; Philadelphia, Pa., $8,500; Baltimore, Md., $4,000; Boston, Mass., $4,500; Richmond, Va., $750; San Francisco, Cal., $2,500; Minneapolis, Minn., $1,500; Milwaukee, Wis., $2,000; Louisville, Ky., $1,000; Atlanta, Ga., $500; Savannah, Ga., $500; Chicago, Ill., $10,000; Hartford, Conn., $500; Indianapolis, Ind., $1,200; Detroit, Mich., $2,000; New Orleans, La., $2,000; St. Louis, Mo., $4,000; whereas nearly all the foregoing representations were in substance false; such negotiations as existed were mainly merely inquiries made by Mr. Middleton; and substantially nothing had been accomplished in the way of selling rights.

(*c*) That the name of Chief Chemist Harvey W. Wiley could be used in promoting the new enterprise, whereas it had been understood and agreed by the defendants with said Wiley that his name should not under any circumstances be made public or used in connection with the letter which had been given for a special purpose only, for a money consideration, and with the above understanding and agreement.

(*d*) That the patent rights which were being sold and were to be the basis of the business and the profits of the Company which was to be organized were the rights to use a fluid newly discovered by the defendant Blackmore, which was not merely a deodorizer or the creation of one odor to mingle with and disguise another odor but was a fluid which when used in the apparatus had germicide power, which could change the nature of poisonous substances, destroy their unhealthfulness and by disinfecting them make them harmless; whereas in truth and in fact this fluid had, as used in the apparatus, no disinfecting or germicide power whatever, but only had an odor which might overcome other odors; and such fluid was utterly worthless for the real purposes for which it was designed to use and sell it; all of which facts the defendants Middleton, Blackmore and Orr ever well knew.

11 19. The complainant avers that all the acts of the defendants hereinbefore recited were parts of a conspiracy formed by them to deceive and defraud the complainant, by inducing him to purchase the aforesaid patent rights of the said Blackmore and to organize a company to use and vend the same; that the complainant and the said Crandall were the dupes and victims of the said conspiracy and they were deluded agents and instruments of the said defendants in organizing said company and in all the subsequent proceedings thereof; and that the said Company was itself an agency and instrumentality for fraud in all directions of the said defendants, and especially of the said defendant Middleton, for which he is personally responsible to the complainant and many other persons who have invested and lost money in connection with the aforesaid patent rights of the said Blackmore.

20. The complainant further avers that all the books and papers of the said Company are in the possession and control of the defendant Middleton; that the great bulk of all papers at any time pos-

sessed by the complainant were turned over to said defendant and cannot now be examined or produced by the complainant, and that it will be impossible for the complainant adequately to prove the deceptions and wrongs practised upon him by the defendants without a discovery by them of facts within their sole possession or that of their servants and agents pertinent to the subject-matter of this bill.

Wherefore the complainant, being without adequate remedy at law, prays:

I.

That process may issue requiring the defendants Frank L. Middleton, Henry S. Blackmore and William G. Orr, and each of them, to appear and answer this bill of complaint and to make suitable disclosure of all the facts herein charged and all others that may be pertinent to the complaint.

II.

That upon such disclosure and the appearance of the truthfulness of the facts charged in this bill of complaint the complainant may have due relief afforded him in this court; that it may be adjudged as to the defendants that they have fraudulently deprived the complainant of all his property as aforesaid and that it may be ordered and decreed that they shall make due restitution thereof to
12 the complainant by paying to him the amounts of money by him paid out as aforesaid; also for such other relief as may be just.

SAMUEL W. CURRIDEN,
Complainant.

L. A. BAILEY,
WM. E. CHANDLER,
Counsel for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I, Samuel W. Curriden, do solemnly swear that I have read the foregoing bill of complaint by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those therein stated upon information and belief I believe to be true.

SAMUEL W. CURRIDEN.

Subscribed and sworn to before me this 25th day of September, A. D., 1909.

[NOTARIAL SEAL.] GEO. H. CAMPBELL,
Notary Public, D. C.

13 *Demurrer.*

Filed May 3, 1910.

* * * * * * *

The demurrer of Frank L. Middleton, the defendant, to the bill of complaint filed herein by Samuel W. Curriden, on to-wit, the 4th

day of April, A. D., 1910, and the defendant, Frank L. Middleton by protestation not confessing nor acknowledging all, or any of the matters and things in said petition contained to be true in manner and form as the same are set forth therein, doth demur thereto, and for causes for demurrer shows:—

1. That the complainant hath not in said bill stated such a case as doth or ought to entitle him to any such relief as is thereby sought and prayed for from or against this defendant.

2. Because the allegations in said bill set forth on their face establish the fact that if the complainant hath any right of action at all against this defendant, it is not such a right of action as is enforcible in a Court of Equity.

3. That the complainant has improperly conceived the forum in which he seeks to have enforced against this defendant, the said alleged cause of action being cognizable, if at all, in a Court of Law.

4. Because the allegations in said bill establish that the complainant has lost whatever remedy he may have had against this defendant because of laches.

14 5. Because the allegations in said bill establish that the complainant has lost whatever remedy he may have had against this defendant because said claim is completely barred by the Statute of Limitations applicable to the claim therein set forth.

6. Because the said allegations disclose that the alleged fraud and misrepresentations of the defendant did not mislead the complainant, who as will appear from a persual of said bill, had with this defendant equal means of knowledge of all the affairs of the American Automatic Disinfectant Company.

7. Because the allegations in said bill fail to set forth in form or in substance such acts of fraud against this defendant as to require him to make answer thereto.

8. Because all the allegations in said bill are so vague, indefinite and inconclusive as to make it impossible for this defendant to make proper answer thereto.

Wherefore, and for other good causes of demurrer in said bill contained, this defendant prays judgment, whether he shall be compelled to make any further or other answer to such petition demurred to as aforesaid.

E. HILTON JACKSON,
Attorney for Defendant Frank L. Middleton.

Messrs. L. A. Bailey, and William E. Chandler, Attorneys for Complainant:

Please take notice that the foregoing motion has been cal-
15 endared for hearing on Friday, May the 13th, at 10 a. m., or as soon thereafter as counsel may be conveniently heard.

E. HILTON JACKSON,
Attorney for Defendant Frank L. Middleton.

Order Sustaining Demurrer and Granting Leave to Amend.

Filed November 18, 1910.

* * * * * * *

This cause coming on to be heard upon the demurrer of the defendant, Frank L. Middleton, and after argument of the same by counsel for the respective parties hereto, and due consideration by the Court, it is, this 18th day of November, A. D., 1910, ordered, adjudged and decreed that the demurrer herein be, and the same is hereby sustained, with leave to the plaintiff to amend within twenty days.

By the Court:—

WENDELL P. STAFFORD, *Justice.*

Amendment to Original Bill of Complaint.

Filed December 24, 1910.

* * * * * * *

To the Supreme Court of the District of Columbia holding an Equity Court the complainant states:

That by leave of Court he makes an amendment of his
16 original bill of complaint filed on the 4th day of April, A. D. 1910 which amendment is as follows:

I. The complainant repeats and makes more distinct and direct his averment that the defendant Middleton deceived him into believing that the said Middleton had no property-ownership or interest in the said patents and rights which the defendants were trying to sell and that he was acting only as Agent for the patentees to help sell the said patents and rights, whereas the Complainant has since been informed and believes and so avers that in truth and in fact the said Middleton was the owner of a large interest in said patents as well as in the rights granted by Blackmore thereunder and that as such owner he was to receive a large portion of the money and stock which might be obtained by selling said patents and rights by means of concealments from and fraudulent representations to the complainant; and the Complainant says that the payments made by him after he had been enticed into purchasing the patents were largely received and retained by said Middleton, namely:

Of the first payment to said Middleton for said Blackmore of $3500 he retained money due from Blackmore to Middleton or his firm amounting to not less than $1300, as the complainant has been informed;

Of the $20,000 paid by the Complainant for rights purchased from the Baltimore parties Middleton received not less than $3800
17 in addition to a stock interest in the new company; and

Of the $7500 paid for rights from Orr, Middleton was to receive not only $500 in cash but credits on other transactions of sales of like character, said Orr having been associated with Middle-

ton in many ways of which the Complainant had no knowledge at the time,—the exact amounts of credits and cash so received by said Middleton out of the amounts so paid by the Complainant are unknown to the Complainant.

And the Complainant avers that if he had not supposed that Middleton was only an Agent and had known that he was in fact the owner as above stated in large part of the patents and the rights thereunder he would not have entered in any way into the purchase nor would he have assumed any obligations or paid any money toward the purchase of the patents or any rights thereunder.

II. The Complainant avers that the defendant Middleton had full knowledge that there was no standing offer of $5000 for rights to use the patents in Minneapolis and St. Paul and yet represented to the complainant that there was such an offer; and further represented that there was a certainty of the sales of rights for large amounts in various other places, whereas in truth and in fact there were no offers made from such places, and the complainant avers that, if it had not been for these representations of the said Middleton, he would not have taken part in the purchase of the
18 patents and rights in the ways described in said original bill of complaint.

III. The Complainant repeats and makes more distinct and direct one of the frauds practiced upon him by the defendants in stating that the patented fluid, Aromoform, to be used in the patened apparatus was not merely a deodorizer but a disinfectant, and the complainant avers that the defendant Middleton distinctly stated to him that the Aromoform was a disinfecting, sterilizing germicide, so that the water treated in the closet bowls became thoroughly sterilized; whereas in fact the fluid was only a deodorizer and not a disinfectant and as used in the apparatus had no sterilizing property and the falsity of this representation was the principal cause of non-success of the company organized on Mr. Middleton's persuasion.

IV. The complainant avers that in the progress of the deceits practiced upon him concerning the real ownership of the patents and rights thereunder, the alleged offers to buy rights to use the same, the prescribed non-user of Chief Chemist Wylie's letter and the use of aromoform as a disinfectant and not merely as a deodorizer, the principal deceiver and chief conspirator was the defendant Middleton, that the organization of the American Automatic Disinfectant Company was only his creation of an agency for his purpose, and in its whole course was only a one-man corporation, designed, pressed forward and utilized by him to aid in deluding the complain-
19 ant and others, inducing him and them to assume liabilities and obtaining from him and taking to himself the large sums of money which the complainant was led to advance.

V. The complainant avers that the facts set out in the original bill of complaint and in this amendment are extremely complicated and that a proper investigation thereof would be long and difficult; that the books, papers, documents and records from which the facts can be ascertained passed into the possession of the said Middleton when he dropped the complainant from the board of directors of the

American Automatic Disinfectant Company, and that an examination thereof is indispensable to enable anyone to unravel the complications of facts bearing upon the question of the frauds alleged against the defendants.

VI. The complainant further avers that while from such careful investigations as he has been able to make, with the evidence accessible to him, he has been led to believe and continues to believe the truth of all the foregoing averments and those of the original bill of complaint, and that the defendant Middleton has been guilty of such frauds and fraudulent representations as made him personally liable to the complainant for all his advancements, payments and losses in connection with the purchase of said patents and rights thereunder yet the complainant was not and is not sufficiently sure of the facts to make him willing to begin an action at law and invoke a trial by jury; wherefore he determined to seek fur-
20 ther enlightenment by means of disclosures to be required of the defendants Middleton, Blackmore and Orr.

VII. The complainant avers that he was duly advised by counsel whom he consulted that being in doubt whether the facts known to him would give him a complete right of action, based upon the alleged frauds committed by the defendants, and realizing that such facts and others connected therewith were complicated and ascertainable only from an examination of books and papers in the possession of the defendants, and by disclosures as aforesaid, therefore he was entitled to the assistance of a court of equity to obtain a disclosure by the defendants, in due course, of all pertinent facts and to obtain access to such books and papers and make an examination thereof, and entitled after and in connection with such disclosure and examination to have a full and accurate accounting made by the defendants concerning all complicated and fraudulent transactions which might be disclosed, wherefore the complainant brought the original bill of complaint and now files this amendment thereof by way of addition thereto.

VIII. The complainant in further pursuance of the discovery by him in Section 20 of his original bill declared to be necessary in order to enable him to prosecute his case asks that as to the defendants the Court will order that they, upon their several and respective Corporal oaths, and according to the best and utmost of their
21 several and respective knowledge, remembrance, information, and belief may make full, true, direct and perfect answer to the several interrogatories hereinafter stated and numbered as follows:

1. Whether the defendant Middleton in procuring the issue of the Blackmore patents or either of them sold to Curriden, or his firm, or any agent of either, sought the aid of Professor Harvey W. Wiley?

2. When and by whom the certificate of Professor Wiley mentioned in the bill was first brought to his attention and under what circumstances?

3. Whether he gave or caused to be given to the complainant a copy of the Wiley certificate?

4. Whether at the time of the sale to Curriden he knew that the Wiley certificate related not to the fluid but solely to the apparatus?

5. Whether he knows where the original of that certificate now is; where did he last see it?

6. Whether he told the defendant Orr or any person that Wiley's name could not be used in connection with the certificate, and if so when and where?

7. Whether he told the complainant at any time that the Wiley certificate related solely to the apparatus and not to the fluid? If so when and where?

8. Whether he or his firm gave any aid in securing the issue of the patents or either of them from the Patent Office?

9. Whether he first had his attention called to the patents or either of them only after they were issued; and whether then by the
22 defendant Blackmore; if not by Blackmore by whom?

10. Whether as agent for Blackmore or Orr or the parties in Baltimore he ever made effort to secure a purchaser previous to the sale to Curriden and Crandall; if so with whom and what were the terms of any negotiations?

11. Whether his books or the books of his patent-law firm show the sale of the patents to Curriden and Crandall, and if so whether he will allow an inspection thereof by the complainant's counsel?

12. Whether he knows and will furnish the names and present address- of the Baltimore parties holding all the selling rights outside of the District of Columbia under the Blackmore patents at the time he sold them to Curriden and whether he will furnish the names and present address- of all who were associated with him in the transaction?

13. Whether he was present at the meetings of the stockholders of the American Automatic Disinfectant Company held in the years 1906 and 1907, and if so whether he voted at either meeting for directors, stating the number of shares then standing in his name and the number he then voted on?

14. How many shares of stock of the company are now outstanding, and in whose name, and what changes if any in ownership has taken place since the beginning of the present suit? And how many shares, if any, of the stock he owns in addition to those stand-
23 ing in his name?

15. Whether he had any agreement or understanding with the defendant Blackmore or others owning interests in the patents concerning the sale thereof or of any rights thereunder; if so with whom and what were the terms of said agreements and what portions if any of the proceeds of such sales were to be paid to him for his own use and benefit? If any such agreements are in writing where and in whose possession are they?

16. Whether he has at any time received for himself money or other things of value in connection with the sales to Curriden of the aforesaid patents and rights thereunder and with the organization and business of said company, either personally or as an agent or attorney, giving dates and amounts?

17. Whether he or his firm ever received an offer of $5000 for

rights under the Blackmore patents for the Cities of Minneapolis and St. Paul; and whether he ever had any knowledge of such an offer to any person or any offer for these rights. If any such offer was made in writing where is it now to be seen and what are the names and residences of the parties?

18. Whether he has knowledge of any sales of rights or of any interest in the American Automatic Disinfectant Company since Curriden was dropped from its board, and if so to whom such sales were made and the terms of the transaction and if the books of the company show such transaction or negotiations to that result will
24 he cause them to be left in the hands of the Clerk of this Court for the inspection of the complainant with liberty for him, his attorney or agents to take copies thereof or extracts therefrom.

19. Whether he had caused to be made any tests of the fluid or of the apparatus before the sale was made by him as agent to Curriden and Crandall; if so when and by whom?

20. Whether he ever learned at any time of any bacteriological tests of aromoform made by any public health officer or by any well known chemist, and if so when, by whom, and with what result?

21. Whether a certain description of the apparatus and aromoform was ever brought to his attention and if so when,—the description being as follows:

"An attractive transparent chamber with a nickel-plated cap or top, which is attached to the down-pipe through which the water passes from the flushing tank to the closet bowl or urinal beneath. In the transparent chamber is placed Aromoform—a disinfecting, sterilizing germicide. Every flushing action has the effect of drawing air through the Aromaform. In its passage the air is thoroughly impregnated with the disinfecting quality and odor of the material; it thence passes into the down-pipe, where it areates the flushing water, and as this water is discharged into the bowl the room is disinfected and deodorized, while the water in the bowl is thoroughly sterilized."

22. Whether he had knowledge of bacteriological tests
25 made by Dr. E. G. Seibert, a chemist of this City, of aromoform, and of the apparatus, this under the instruction and with the assistance of the defendant Blackmore; and whether he ever made effort to learn the result of the tests made by Dr. Seibert?

23. Whether he opposed the making of tests by Dr. Seibert of aromoform and if so for what reason did he deem any tests beyond the certificate of Dr. Wiley necessary? And whether he ever made effort to learn of the result of the tests made by Dr. Seibert?

24. Whether he has seen the defendant Blackmore since the filing of this suit and if so when and where?

25. Whether the defendant Blackmore owed him or his firm anything at the time the patents were sold to Curriden and Crandall; if so how much and for what?

26. Whether he has seen the defendant Orr since the filing of this suit and if so when and where?

27. Whether he was in any wise connected with the transaction

in which the defendant Orr became a purchaser of rights under the Blackmore patents afterwards sold to Curriden and, if so, how connected and if as agent, for whom?

28. Whether he advised the defendant Orr to become interested in the enterprise?

The complainant specifies of the foregoing interrogatories such as are not necessary to be answered by the defendant Blackmore, numbered as follows: 1 to 28 both inclusive, and 32 to 34
26 which follow, both inclusive, and he prays that said defendant Blackmore may be required to specially answer:

29. Whether he or his attorney secured from Prof. Wiley the certificate described in the bill; if not by whom was such certificate secured, for what purpose, and where can it now be seen?

30. And whether the patents or either of them owned by him and sold to Curriden were prosecuted to allowance by the defendant Middleton or the firm of which he is a member; if not who, if any, was his attorney before the Patent Office?

31. And whether there were infringements brought to his knowledge in the use of said patented aromaform or apparatus sold to Curriden, and if so what, if anything of prosecution was done by him or by any others interested with him in the ownership?

The complainant specifies of the foregoing interrogatories such as are not necessary to be answered by the defendant Orr numbered as follows: 1 to 31, both inclusive, and he prays that said defendant Orr may be required to specially answer

32. When and by whom the Blackmore apparatus or fluid or either of them was first brought to his attention; what rights thereto he ever obtained, and if so, when and to what extent, from whom he bought them and through what agents and what amount was paid or agreed upon and in what form and from whom and to whom
27 was the consideration to proceed and did proceed in the beginning?

33. Whether he had knowledge of the Wylie certificate and if so when and by whom was it first brought to his attention and under what circumstances?

34. And whether he has negotiated to sell rights owned by the Company or any interest in either since Curriden was dropped from the Board; if so who were the parties, what were the terms agreed upon, the payments made, if any, and whether or not the defendant Middleton had knowledge of these negotiations?

IX. The complainant informs the court that the original bill has never been served upon the defendants Blackmore and Orr; that, although they often frequented Washington before the bill was filed, the complainant has not been able to learn of their presence here since that time but he has sent to them by mail copies of the bill.

X. The complainant also informs the court that after the original bill was prepared and before it was filed an Agreement of Arbitration between the complainant and the defendant Middleton was duly signed on the 23rd day of December, 1909, covering all the matters in controversy between them, under which agreement one arbitrator was to be appointed by each party and the two were to select a third,

and the complainant duly appointed Mr. Hannis Taylor an
28 the defendant Middleton appointed Mr. E. Beverly Slate
but the two have not been able to agree upon the third arbi
trator.

Wherefore the complainant now prays this court in this proceed
ing to take jurisdiction of the Agreement of Arbitration and to ap
point the third arbitrator therein.

And for the relief specially prayed in said original bill and als
for general relief as therein prayed.

SAMUEL W. CURRIDEN,
Complainant.

LORENZO A. BAILEY,
WM. E. CHANDLER,
Counsel for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I, Samuel W. Curriden, do solemnly swear that I have read the foregoing amendment to the original bill of complaint by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those therein stated upon information and belief I believe to be true.

SAMUEL W. CURRIDEN.

Subscribed and sworn to before me this 23d day of December A. D. 1910.

[SEAL.]

GEORGE H. CAMPBELL,
Notary Public, D. C.

29 *Demurrer to Amended Bill of Complaint.*

Filed December 30, 1910.

* * * * * * *

The demurrer of Frank L. Middleton, the defendant, to the amended bill of complaint filed herein by Samuel W. Curriden, on to-wit, the 24th day of December, A. D., 1910, and the defendant, Frank L. Middleton, by protestation not confessing nor acknowledging all, or any of the matters and things in said amended bill contained to be true in manner and form as the same are set forth therein, doth demur thereto, and for causes for demurrer show:—

1. That the complainant hath not in said amended bill stated such a case as doth or ought to entitle him to any such relief as is thereby sought and prayed for from or against this defendant.

2. Because the allegations in said amended bill set forth on their face establish the fact that if the complainant hath any right of action at all against this defendant, it is not such a right of action as is enforcible in a Court of Equity.

3. That the complainant in said amended bill has improperly conceived the forum in which he seeks to have enforced against this defendant, the said alleged cause of action being cognizable, if at all, in a Court of Law.

4. Because the allegations in said amended bill establish that the complainant has lost whatever remedy he may have had against this defendant because of laches.

30 5. Because the allegations in said amended bill establish that the complainant has lost whatever remedy he may have had against this defendant because said claim is completely barred by the Statute of Limitations applicable to the alleged claim therein set forth.

6. Because the allegations in said amended bill disclose that the alleged fraud and misrepresentations of the defendant did not mislead the complainant, who, as will appear from a perusal of said amended bill, had with this defendant equal means of knowledge of all the affairs of the American Automatic Disinfectant Company.

7. Because the allegations in said amended bill fail to set forth in form or in substance such acts of fraud against this defendant as to require him to make answer thereto.

8. Because all the allegations in said amended bill are so vague, indefinite and inconclusive as to make it impossible for this defendant to make proper answer thereto.

Wherefore, and for other good causes of demurrer in said amended bill contained, this defendant prays judgment, whether he shall be compelled to make any further or other answer to such petition demurred to as aforesaid.

E. HILTON JACKSON,
Attorney for Defendant Frank L. Middleton.

31 Messrs. L. A. Bailey and William E. Chandler, Attorneys for Complainant:

Please take notice that the foregoing motion has been calendared for hearing on Friday, January 6th, A. D., 1911, at 10 A. M., or as soon thereafter as counsel may be conveniently heard.

E. HILTON JACKSON,
Attorney for Defendant Frank L. Middleton.

Opinion of the Court.

Filed February 20, 1911.

* * * * * * *

This case has been heard upon demurrer to the bill as now amended. There was a demurrer to the original bill which was sustained and the bill adjudged insufficient. Thereupon, with leave of court, the plaintiff filed amendments, and the present demurrer is to the bill as thus amended. Broadly stated, the plaintiff's claim is that the defendants have deprived him of his property by fraud and deceit, and should be ordered to restore to him the amounts of money he has paid out by reason thereof, and should be required to make a full disclosure touching all matters charged in the bill. The only decree sought is a money decree. The principal objection made to

the bill under the demurrer is that the case as set forth in the
32 bill is a proper case for an action at law for deceit, where full relief can be had, and that consequently there is no ground for the jurisdiction of a court of equity.

The original bill sets out that in the year 1904, and for many years prior thereto, a personal friendship had existed between the plaintiff and the defendant Middleton; that Middleton was a patent attorney in active practice; that plaintiff was engaged in various other business affairs and had accumulated some Thirty-five thousand dollars, and had ample financial credit. That these facts were known to Middleton; that the plaintiff had entire confidence in Middleton's loyalty as a friend and in his knowledge and skill as an attorney; that in October 1904, Middleton, through one Orr, another of the defendants, who was then a stranger to the plaintiff, brought to the attention of the plaintiff, a certain fluid called Aromaform, and a certain apparatus intended as a disinfecting appliance in the use of said fluid, and made certain representations to the plaintiff touching the power and value of said fluid as a disinfectant, and touching the invention and patenting of said fluid and apparatus, and representing that Middleton was the agent of the owners of all the patents covering said fluid and apparatus, with power to make a sale of the same and the rights thereunder, and representing that there had been various complications of ownership so that up to that moment it had been impossible to completely purchase said patent rights, and that now the opportunity to purchase the same should not be neglected. That further to engage the interest and
33 confidence of the plaintiff, Middleton through Orr, exhibited to the plaintiff a copy of a certain letter, written and signed by Harvey W. Wiley, Chemist of the Agricultural Department of the United States, which is set out in the bill, and which is to the effect that he, the said Wiley, was using one of the apparatus and that four distinct and important results were thereby secured, from which said Wiley inferred and believed that the process was useful and simple, and one that could be easily introduced at a low rate into private houses and public buildings, and would be a great benefit. That at first the plaintiff being distrustful by reason of his ignorance and want of skill in such matters, declined to take any part in the enterprise, but that his objections were overcome by further representations of Middleton which are set out in the bill at considerable length, and which relate to the value of the fluid and apparatus, and the various advantages that would result from the enterprise. That yielding to the solicitations of Middleton, the plaintiff and one Crandall, a friend of the plaintiff, agreed with Middleton to purchase all said rights, to be paid for, partly in cash and partly in stock of the company to be organized by them with a capital of Five hundred thousand dollars. That in pursuance of the agreement, the company was duly incorporated. That in the same month, plaintiff paid Middleton $1500., for which Middleton receipted as agent, and thereafter the plaintiff paid further sums and gave his notes, incurring an indebtedness of some forty thou-
34 sand dollars in carrying out said enterprise, and all such rights were transferred to said company. That thereafter the com-

pany attempted to engage in the business for which it had been created, namely, the manufacture and sale of the fluid and apparatus. That a building was secured by lease and one Blackmore, the inventor of the fluid and apparatus, who is also a defendant, was put in charge of the laboratory. That one Bright was made President, the plaintiff Treasurer, Crandall manager, and Middleton and Bright trustees, of said company. That efforts were made to increase the local business, when it was found that there had been a misrepresentation by the defendants touching the number of machines in use in Washington, and that many of those in use had been made the subject of complaint for reasons that had been concealed from plaintiff and Crandall. That the plaintiff's suspicions being aroused by these and other facts that came to his knowledge, he made further investigations, and found that the fluid and apparatus were worthless for the uses proposed by the defendants. That as the result of the foregoing, the plaintiff became sick and distressed and financially exhausted and resigned his office of treasurer. That Bright resigned as President, and that Crandall resigned after another month. That Middleton became President and caused the plaintiff to be dropped from the Board of Trustees, that thereafter Middleton became, and ever since continued to be, the sole manager and controller of the company and all its assets and records. That in 1906 the plaintiff made an agreement with the company through its trustees,
35 by which he was to be released from his obligations, which were to be assumed by the company. That the plaintiff has performed his part of this contract. That the company being under the control of Middleton has failed to perform its part, leaving the obligations still outstanding against the plaintiff. That said obligations amount to about 13,000. That had the company fulfilled its agreement, the plaintiff's losses would amount to about Thirty Thousand dollars, whereas now he is insolvent. That the corporation itself is hopelessly insolvent. The bill then recapitulates the most substantial of the misrepresentations claimed to have been made to the plaintiff by the defendant, and avers that said certificate of Dr. Wiley was obtained upon condition that it should not be used publicly and therefore was of no value for business purposes; that Middleton was in fact interested in the patent rights and expected to receive a large part of any money that might be realized by a sale thereof to the plaintiff, and that all the acts of the defendant recited in the bill were parts of a conspiracy to deceive and defraud him, of which conspiracy the plaintiff and Crandall were the dupes and victims. That the company itself was an agency for fraud in the hands of the defendants and especially in the hands of the defendant Middleton. That all the books and papers of the company are in the possession and control of Middleton, and that the great bulk of all papers at any time possessed by the plaintiff were turned over to the defendants and cannot now be examined or produced by the
36 plaintiff and that it will be impossible for the plaintiff adequately to prove the wrongs and deceptions practiced upon him by the defendants without disclosure by them of facts within

their sole possession or of their servants and agents, pertinent to the subject matter of the bill.

By his amendment the plaintiff makes more distinct and direct his averment that Middleton deceived him into believing that Middleton had no ownership or interest in said property and patent rights, but was merely acting as agent, whereas in fact he did have such an interest and received the various amounts specifically stated in the amendment from the money paid by the plaintiff. It also makes more direct and pointed the charges as to various of the deceptions practiced upon the plaintiff by the defendant, whereby plaintiff was induced to go into the enterprise, but these are all of the same general nature as those stated in the bill. He further states "that while from such careful investigations as he has been able to make, with the evidence accessible to him, he has been led to believe and continues to believe the truth of all the foregoing averments and those of the original bill of complaint, and that the defendant Middleton has been guilty of such frauds and fraudulent representations as made him personally liable to the complainant for all his advancements, payments and losses in connection with the purchase of said patents and rights thereunder yet the complainant was not and is not sufficiently sure of the facts to make him willing to begin an action at law and invoke a trial by jury;
37 wherefore he determined to seek further enlightenment by means of disclosures to be required of the defendants." The plaintiff added the following: "The complainant avers that he was duly advised by counsel whom he consulted that being in doubt whether the facts known to him would give him a complete right of action, based upon the alleged frauds committed by the defendants, and realizing that such facts and others connected therewith were complicated and ascertainable only from an examination of books and papers in the possession of the defendants, and by disclosures as aforesaid, therefore he was entitled to the assistance of a court of equity to obtain a disclosure by the defendants, in due course, of all pertinent facts and to obtain access to such books and papers and make an examination thereof, and entitled after and in connection with such disclosure and examination to have a full and accurate accounting made by the defendants concerning all complicated and fraudulent transactions which might be disclosed, wherefore the complainant brought the original bill of complaint and now files this amendment thereof by way of addition thereto."

No service has ever been made upon defendants Blackmore and Orr, and they are not before the court. The demurrer, is interposed by the defendant Middleton and the bill is to be considered as a bill against him. It should be observed at the outset that the only relief sought is a money decree making the plaintiff whole for what he has expended in reliance upon the false representations of the defendants, and as incidental thereto, a so-called discovery. It
38 is not alleged that there is any property existing at present which represents the moneys paid by the plaintiff. No effort is made to impress any property with a trust, or to require the defendants to state what has been done with the money received by

them. Most of the money, it appears, was paid to others than the defendants. It appears that the plaintiff is still the owner of some three hundred shares of the stock of the corporation. No re-cission of any contract is demanded, no offer is made to turn over said stock, all that the plaintiff desires in the form of a final decree is money to make good the damage he has sustained. For this has he not a full, adequate and complete remedy at law? The misrepresentations and circumstances set forth in the bill are all such as would be provable in an action at law, and of course there a money judgment could be obtained. There was no trust relation between the plaintiff and the defendant, in the sense in which those words are used in equity, as the basis for relief, and there was no confidential relation in the technical sense which would throw upon the defendant-, or either of them, the burden of proof. The plaintiff and Middleton were close personal and social friends, but it is not alleged that Middleton had ever acted as attorney for the plaintiff, or had ever been his confidential adviser in business matters. It is true there is an allegation that Middleton in fact had a financial and property interest in the patent rights which were the subject of the sale, and the amendment to the bill makes this allegation more positive and specific. It is alleged that Middleton himself received a part
39 of the proceeds of the sale moving from the plaintiff. It is also alleged that he represented to the plaintiff that he had no such interest, but was only an agent for making the sale. It is further alleged that he induced the plaintiff to purchase a part of the invention and the rights thereunder with a view to their both becoming interested in a corporation that should take over said invention and rights and exploit them,—not that they should form a partnership for that purpose, but that each should take a part of the stock. These are the only allegations which appear to the court to furnish anything like a ground for interference by a court of equity, in distinction from a ground which would afford the basis for an action at law; but upon careful analysis these seem to be insufficient to give equity jurisdiction. Relief is not sought upon the ground of a partnership. No accounting is sought of Middleton as a partner. No partnership relation is alleged to exist between them. The allegations just referred to are made in order to show one part of the deception that was practiced upon the plaintiff. In this respect the case is very much like Tyler v. Moses, 13 App. D. C. 428, and indeed in other respects the cases are remarkably similar. In that case there was an answer and proofs were taken, and the court held that it was too late, after that, to raise the question of jurisdiction, but said that aside from the question of partnership involved in that case, the objection would have been fatal if it had been taken, as this has been, upon the threshold. In the Tyler v. Moses case also the de-
40 fendant had posed as having no interest in the sale of the stock except by virtue of an option, whereas he was in fact the real owner of a part of it. Yet that fact was thought not to alter the case so far as the jurisdiction of equity was concerned. The court considered it as falling within Buzard v. Houston, 119 U. S. 347, except for the allegation of partnership. Buzard v. Houston is a

strong authority for the proposition that where the only relief sought is a money decree for damages occasioned by fraud and deceit, the remedy at law is adequate and exclusive. That authority is of course binding upon this court, and it is not necessary to pursue this line of reasoning further. But it is urged that in the case at bar, the circumstances of fraud are so complicated as to make the case an exception to that rule. No authority is cited that supports this proposition, and in fact the allegations of fraud are not especially complicated. The misrepresentations and circumstances are distinctly set forth in the bill, and they are only such as might in their nature be proved by proper evidence in a court of law. There are many general allegations of fraud, to be sure, but general allegations of this nature are not effectual further than they are supported by specific averments touching the facts which are conceived by the pleader to constitute the fraud, and those averments have been recited and commented upon already. United States v. De Moines etc. Co., 142 U. S. 544; 16 Cyc. 231, and cases cited.

41 Furthermore, it is strongly urged that the bill seeks a discovery. The answer made to this is, first, that such discovery as is asked for, is only incidental to such relief as might be had at law and is for that reason an insufficient ground; and in the next place, that a statute now existing enables the plaintiff to secure all the discovery he is asking for by proper process at law. Code Sec. 1072. There seems to be some conflict in the authorities touching the first of these propositions, but touching the second proposition, the later cases, particularly those in the Supreme Court of the United States, seem to be with the defendant. Courts of equity are not inclined to maintain a bill merely for purposes of discovery at the present day where the statutes have afforded ample means of procuring the evidence in an action at law; and this seems to be the sound view of the matter. The defendant is entitled under the Constitution to a trial by jury of matters strictly cognizable at law. In the present case the plaintiff himself states that he does not feel sure enough of his ground to institute an action at law, and for that very reason wishes to know what the defendant will say. This is an admission that the present bill is an attempt to get the defendant committed upon various questions of fact before instituting legal proceedings, although the plaintiff does not pretend that he is ignorant of any of the matters of fact which he makes the basis of the bill. On the contrary he sets these facts forth with great particularity. There is apparently another reason why relief is sought in equity rather than at law. The misrepresentations appear to have

42 been manifest to the plaintiff as early as 1905, certainly as early as 1906, when he made an arrangement with the corporation to be relieved of his liability upon his obligations. This bill was not filed until 1910. The period of limitations upon actions of this nature is three years. Code Sec. 1265. The fact that the statute of limitations is a bar to a proceeding at law, especially when it also appears that the fraud was discovered more than three years before any proceeding was begun, certainly cannot be relied upon as a ground for equitable jurisdiction. The court has given very care-

ful consideration to this case, both by reason of the importance of the case to the plaintiff as well as to the defendant, and because a court of equity is always reluctant to sustain a demurrer to a bill which charges fraud, but it has not been able to discover any ground upon which it could support its jurisdiction consistently with the decisions which are undoubtedly binding upon this court.

Accordingly it is considered best for both parties that the demurrer be sustained, and the bill adjudged insufficient, thus enabling the plaintiff to take the opinion of the appellate court at this stage of the proceedings.

WENDELL P. STAFFORD, *Justice.*

43 *Decree Sustaining Demurrer, &c.*

Filed February 24, 1911.

* * * * * * *

This cause coming on to be heard upon the amended bill filed herein on the 24 day of December, A. D., 1910, and the demurrer of the defendant, Frank L. Middleton, filed herein on the 30 day of December, A. D. 1910, and after argument by counsel for the respective parties hereto and due consideration by the Court, it is, this 24 day of February, A. D., 1911, adjudged, ordered and decreed, that the demurrer be, and the same is hereby sustained and,

It is further adjudged, ordered and decreed that said bill as amended be and the same is hereby dismissed with costs.

By Order of the Court:

WENDELL P. STAFFORD, *Justice.*

Order Allowing Appeal and Fixing Bond.

Filed March 17, 1911.

* * * * * * *

From the final decree in this cause the plaintiff by his attorney now here in open court notes an appeal to the Court of Appeals of the District of Columbia, and upon motion of counsel the amount
44 of the appeal bond for costs not to operate as a supersedeas is hereby fixed at $100., this 17th day of March, 1911.

WENDELL P. STAFFORD, *Justice.*

Memorandum.

March 18, 1911.—Bond on appeal for $100 approved.

Order for Transcript of Record on Appeal.

Filed April 7, 1911.

* * * * * * *

The Clerk of said Court will please prepare the transcript of record on appeal including therein the following, viz (1) Original Bill,

(2) Demurrer filed May 3, 1910, (3) Order of Nov. 18, 1910 sustaining demurrer &c., (4) Amendment of Bill (5) Demurrer filed Dec. 30, 1910, (6) Opinion filed Feb'y 20, 1911, (7) Decree of Feb'y 24, 1911, dismissing bill, &c., (8) Order filed March 17, 1911, fixing amount of appeal bond, &c. (9) Memo. showing filing of appeal bond. (10) This order.

LORENZO A. BAILEY,
Attorney for Plaintiff.

45 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 44, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 29,257 in Equity, wherein Samuel W. Curriden, is Complainant and Frank L. Middleton, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 3rd day of May, 1911.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2293. Samuel W. Curriden, appellant, vs. Frank L. Middleton et al. Court of Appeals, District of Columbia. Filed May 3, 1911. Henry W. Hodges, clerk.

MONDAY, *November 6th*, A. D. 1911.

No. 2293.

SAMUEL W. CURRIDEN, Appellant,
vs.
FRANK L. MIDDLETON, HENRY S. BLACKMORE, and WILLIAM G. ORR.

The argument in the above entitled cause was commenced by Mr. W. L. Chambers, attorney for the appellant, and was continued by Mr. E. Hilton Jackson, attorney for the appellees.

TUESDAY, *November 7th*, A. D. 1911.

No. 2293.

SAMUEL W. CURRIDEN, Appellant,
vs.
FRANK L. MIDDLETON, HENRY S. BLACKMORE, and WILLIAM G. ORR.

The argument in the above entitled cause was continued by Messrs. E. Hilton Jackson and C. B. Calvert, attorneys for the appellees, and was concluded by Mr. L. A. Bailey, attorney for the appellant.

No. 2293.

SAMUEL W. CURRIDEN, Appellant,
vs.
FRANK L. MIDDLETON, HENRY S. BLACKMORE, and WILLIAM G. ORR.

(*Opinion.*)

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This is a suit in equity brought by appellant, plaintiff below, against the defendants, Middleton, Blackmore and Orr.

The amended bill, briefly stated, sets forth that plaintiff was induced through the false and fraudulent representations of the defendants to invest about forty thousand dollars in a certain patent consisting of a fluid called "Aromaform," and an apparatus by which the fluid could be used for disinfecting purposes. The patent, plaintiff alleges, was represented to be of great value by the defendants Orr and Middleton; and, relying upon the representations of Middleton, who was a patent attorney, and presumed to be skilled in the art, and who claimed to act only as the agent of Blackmore, plaintiff, and one Crandall, a friend of the plaintiff, agreed with Middleton to purchase all of the rights to said patent held by the patentee Blackmore, said rights to be paid for partly in cash and partly in stock of a corporation to be organized by them with a capital of five hundred thousand dollars.

It is alleged that in pursuance of the agreement the corporation was formed; that immediately after its formation plaintiff paid Middleton fifteen hundred dollars, for which Middleton receipted as agent; that thereafter plaintiff paid further sums and gave his notes, incurring an indebtedness of about forty thousand dollars, and that all the rights acquired were transferred to said company. It is also alleged that after the corporation was organized plans were formulated to engage in the business for which the company had been brought into existence, namely, the manufacture and sale of the fluid and apparatus. A building was leased, and Blackmore, the inventor, was put in charge of the laboratory. One Bright was made president of the company; the plaintiff, treasurer; Crandall, manager; and Middleton and Bright, trustees. When efforts were made to increase the local business, plaintiff avers that he discovered that there had been gross misrepresentations made to him by the defendants in regard to the number of machines in successful use in Washington, and that upon investigation he found that the fluid and apparatus were worthless for the uses purposed.

Plaintiff alleges that in 1906 he entered into an agreement with the company through its trustees by which he was to be released from certain obligations amounting to about thirteen thousand dollars, which he had assumed on behalf of the company; that plaintiff has performed his part of the agreement, but that the company, under the control of Middleton, has failed to perform its part, leaving the obligations still outstanding against the plaintiff, and that the corporation is hopelessly insolvent.

The bill then sets forth the substantial misrepresentations claimed to have been made to plaintiff by defendant, in which it is averred that Middleton was not acting as the agent of Blackmore in the sale of this patent, but that he was in fact interested in the patent rights and expected to receive a portion of any money that might be realized from the sale thereof, and that the acts of defendant, as set forth in the bill, were parts of a conspiracy to deceive and defraud the plaintiff and Crandall; that the corporation was an agency used by the defendants, and especially the defendant Middleton, for the purpose of perpetrating the alleged frauds, and that the books and papers of the company are in the possession and control of Middleton, for which plaintiff seeks a disclosure so as to enable him adequately to prove the wrongs and deceptions practiced upon him by the defendants. Plaintiff prayed that process should issue requiring defendants to answer the bill and make a disclosure of all facts charged or that may be pertinent thereto, and that upon such disclosure and the appearance of the truthfulness of the facts charged in the bill, the court should afford plaintiff due relief by decreeing that defendants make due restitution by paying plaintiff the amounts of money by him paid, as set out in the bill. There is also a prayer for general relief.

No service was made upon the defendants Orr and Blackmore; hence they are not before us. Defendant Middleton demurred to the bill on several grounds, one of which is sufficient for the purposes of this appeal, namely, "because the allegations in said amended bill set forth on their face establish the fact that if the

complainant hath any right of action at all against this defendant, it is not such a right of action as is enforceable in a court of equity." On hearing, the court sustained the demurrer and dismissed the bill.

It is true that Middleton is charged with having a financial interest in the patent rights; that he received a part of the proceeds of the sale, and that he represented to plaintiff that he had no such interest, but was only an agent for the purpose of negotiating the sale. It also appears from the bill that he induced plaintiff to purchase a part of the invention with a view of their becoming interested in a corporation that should take over the invention, and each was to take a part of the capital stock. From the bill it appears that the plaintiff still owns and retains about three hundred shares of the capital stock of the corporation. He seeks no recission of any contract, no fiduciary relation exists, and no offer is made to return the stock. The sole relief sought is a final decree for a money judgment to make good the damage he has sustained. Upon the averments of the bill it is contended by counsel for defendant that plaintiff has a full, adequate and complete remedy at law.

An analysis of the bill discloses an action for fraud and deceit, without any of the essential elements present to entitle plaintiff to be heard in a court of equity. In the original judiciary Act defining the jurisdiction of the courts of the United States it is enacted that "suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law." R. S., sec. 723. It follows, therefore, that the courts will not sustain a bill in equity for the mere recovery of damages when the same result can be obtained at law. Where a court of law can proceed to judgment without the aid of a court of equity, and the ends of justice can be equally well administered, the plaintiff must proceed at law, for the defendant is entitled to his constitutional right of trial by jury. Hipp v. Babin, 19 How., 271; Buzard v. Houston, 119 U. S., 347.

But it is insisted that since discovery is sought, relief can only be afforded by a court of equity. Neither the relief sought nor the relation of the parties is such as to prevent plaintiff from securing everything it is alleged the discovery will disclose by proper process at law. The books, papers, documents and records of the several transactions set out in the bill are all that is sought by the discovery. These are charged to be in the possession of defendant. They can all be obtained by legal process. The statute affords ample relief. Code, D. C., sec. 1072. The court below, referring to this branch of the case, said: "Courts of equity are not inclined to maintain a bill merely for purposes of discovery at the present day where the statutes have afforded ample means of procuring the evidence in an action at law; and this seems to be the sound view of the matter. The defendant is entitled under the Constitution to a trial by jury in matters strictly cognizable at law. In the present case the plaintiff himself states that he does not feel sure enough of his ground to institute an action at law, and for that very reason wishes to know what defendant will say. This is an admission that the present bill is an attempt to get the defendant committed upon various ques-

tions of fact before instituting legal proceedings, although the plaintiff does not pretend that he is ignorant of any of the matters of fact which he makes the basis of the bill. On the contrary, he sets these facts forth with great particularity."

Discovery is here sought because of uncertainty in the proof. The purpose is ulterior, and is not, therefore, a ground for equity jurisdiction. The American courts have laid down the principle that a party coming into equity for discovery alone must allege in his bill, and verify the allegations by affidavit, that he has no other means of proving his case. Gelston v. Hoyt, 1 Johns. Ch., 543. A review of the bill discloses that plaintiff has totally failed to bring his case within the rule. In the case of Tyler v. Savage, 143 N. S., 79, relied upon by plaintiff, the facts, as disclosed by the bill and the relief sought, are not analagous to the present case. There the bill prayed for an accounting of the assets and debts of the company; that the assets be realized upon as quickly as possible and the funds paid to its creditors, and that the money paid by the plaintiff for capital stock issued to her should be made a debt of the company, and payment of the same, with interest thereon, be decreed to her. An application was made for the appointment of a receiver to take charge of the effects of the corporation and to administer them under the direction of the court, and for an injunction restraining the company, its officers and agents, from managing or interfering with its affairs, with an additional prayer for general relief. It will be observed that the facts stated in the bill and the relief sought were entirely different from the present case.

It is unnecessary to consider the other questions presented by the appeal. The demurrer was properly sustained. The decree is affirmed with costs.

Affirmed.

MONDAY, *December 4th*, A. D. 1911.

October Term, 1911.

No. 2293.

SAMUEL W. CURRIDEN, Appellant,
vs.
FRANK L. MIDDLETON, HENRY S. BLACKMORE, and WILLIAM G. ORR.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE VAN ORSDEL,
December 4, 1911.

In the Court of Appeals of the District of Columbia.

No. 2293.

SAMUEL W. CURRIDEN, Appellant,
vs.
FRANK L. MIDDLETON et al.

The appellant, Samuel W. Curriden, conceiving himself aggrieved by the decree of this Court herein rendered, prays an appeal therefrom to the Supreme Court of the United States and moves the Court to fix the amount of the bond for costs on such appeal and also to stay the issue of mandate on said decree.

LORENZO A. BAILEY,
Counsel for Appellant.

Assignment of Errors.

The appellant respectfully submits that this Court in and by its decision and decree erred as follows, viz:

1. In holding that the appellant was not entitled to a full disclosure by the defendants, under oath, as prayed in the amended bill, of and concerning the several matters as to which they were therein specifically interrogated.

2. In holding that Section 1072 of the Code, D. C., under which the defendants could have been required, in an action at law, to produce books and writings in their possession or power, afforded ample relief to the complainant as to the discovery sought by him.

3. In holding that the amended bill did not show the complainant to be entitled to full answers to the specific interrogatories therein contained, notwithstanding the fact appearing upon the face of said bill that the production of books and writings under Section 1072 of the Code D. C., was not, alone and without such answers, sufficient to enable the complainant to maintain his allegations as to the complicated fraud of which he complains, and notwithstanding also the specific averment, under oath, in said bill, "that it will be impossible for the complainant adequately to prove the deceptions and wrongs practiced upon him by the defendants without a discovery by them of facts within their sole possession," etc.

4. In holding that the appellant had a plain, adequate and complete remedy at law as to the matters compalined of in his amended bill.

5. In affirming the decree of the Supreme Court of the District of Columbia.

LORENZO A. BAILEY,
Counsel for Appellant.

(Endorsed:) No. 2293. Samuel W. Curriden, Appellant, vs. Frank L. Middleton et al. Petition for allowance of appeal and assignment of errors. Court of Appeals, District of Columbia. Filed Dec. 20, 1911. Henry W. Hodges, Clerk.

WEDNESDAY, *December 20th*, A. D. 1911.

No. 2293.

SAMUEL W. CURRIDEN, Appellant,

vs.

FRANK L. MIDDLETON, HENRY S. BLACKMORE, and WILLIAM G. ORR.

On motion of Mr. L. A. Bailey, of counsel for the appellant in the above entitled cause, it is ordered by the Court that said appellant be allowed an appeal to the Supreme Court of the United States and the bond for costs is fixed at the sum of three hundred dollars.

(*Bond on Appeal.*)

Know all me by these presents, that we, Samuel W. Curriden, as principal, and United States Fidelity and Guaranty Company, a corporation of the State of Maryland, as surety, are held and firmly bound unto Frank L. Middleton, Henry S. Blackmore and William G. Orr in the full and just sum of Three hundred dollars, to be paid to the said Frank L. Middleton, Henry S. Blackmore and William G. Orr, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-third day of December, in the year of our Lord one thousand nine hundred and eleven.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between the said Samuel W. Curriden, Appellant, and the said Frank L. Middleton, Henry S. Blackmore and William G. Orr, Appellees, a decree was rendered against the said Samuel W. Curriden and the said Samuel W. Curriden having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Frank L. Middleton, Henry S. Blackmore and William G. Orr citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, that if the said Samuel W. Curriden shall prosecute said appeal to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

SAMUEL W. CURRIDEN, [SEAL.]
UNITED STATES FIDELITY
AND GUARANTY COMPANY, [SEAL.]
By J. S. SWORMSTEDT, [SEAL.]
Attorney-in-Fact.

[Seal of United States Fidelity and Guaranty Company.]

Sealed and delivered in presence of—
E. FRANK COULTRY.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals
of the District of Columbia.

[Endorsed:] No. 2293. Samuel W. Curriden, Appellant, vs. Frank L. Middleton et al. Bond for Costs on Appeal to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Dec. 26, 1911. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Frank L. Middleton, Henry S. Blackmore, and William G. Orr, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Samuel W. Curriden is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 26th day of December, in the year of our Lord one thousand nine hundred and eleven.

SETH SHEPARD,
Chief Justice of the Court of Appeals of
the District of Columbia.

Service acknowledged Dec. 26, 1911.
E. HILTON JACKSON,
Counsel for Appellees.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 35 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Samuel W. Curriden, Appellant, vs. Frank L. Middleton, Henry S. Blackmore, No. 2293, October Term, 1911, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 26th day of December, A. D. 1911.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of
the District of Columbia.

Endorsed on cover: File No. 22,985. District of Columbia Court of Appeals. Term No. 152. Samuel W. Curriden, appellant, vs. Frank L. Middleton, Henry S. Blackmore, and William G. Orr. Filed December 27, 1911. File No. 22,985.

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 152.

SAMUEL W. CURRIDEN, *Appellant*,

vs.

FRANK L. MIDDLETON, HENRY S. BLACKMORE AND WILLIAM G. ORR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Filed December 27, 1911.
22,985.

BRIEF OF THE APPELLANT.

[A Preliminary Memorandum.—The appellant's counsel, who have only recently fully realized the growing disposition of trial courts to discourage suits in equity, which seems to almost change the rule that such a suit may be brought where there is not at law a remedy plain, adequate and complete, to a rule that such a suit shall not be brought if by any possibility a remedy can be had in a suit at law, hereby state that they desire, if necessary, to avail their

client of the privilege given by the new equity "Rule of Practice for the Courts of Equity No. 22," and to have his case transferred to the law side of the court below and there proceeded with. Rather than be barred by the statute of limitations if the full conclusion of the courts below is sustained, they will endeavor to maintain their claim by so framing issues at law as to entitle them to a recovery. If there is, from this course, any danger of substantial injustice to the defendants it will be prevented under Rule 81.]

THE NATURE OF THE CASE.

This is a suit in equity in the Supreme Court of the District of Columbia brought by the plaintiff against the three defendants for a conspiracy to defraud him. A demurrer was filed on the ground that there could be no jurisdiction in equity, and thereupon an amendment to the bill was made, and the demurrer was renewed. The demurrer was sustained and the bill dismissed. An appeal was taken to the Court of Appeals of the District of Columbia which affirmed the decree of dismissal. A further appeal was taken to the Supreme Court of the United States, with errors assigned by the plaintiff; which is the case now pending. The errors assigned are the conclusion that the plaintiff is not entitled to a remedy in equity because he has a plain, adequate and complete remedy at law, and the dismissal of the bill. Record, p. 31.

THE FACTS AVERRED IN THE BILL.—Record, 1-18.

The plaintiff Curriden and the principal defendant, Middleton, were intimate friends, the latter being a patent attorney in active practice. Curriden had in various businesses accumulated a fortune of about $35,000. Middleton, through the defendant Orr, sought Curriden to induce him

to aid in purchasing and organizing a company to utilize a fluid called Aromaform and an automatic apparatus for handling it to prevent disease, all being inventions of the defendant Blackmore, a chemist, and all patents having been procured by Middleton. The defendants made representations as to the value of the inventions and stated that an opportune moment had arrived for purchasing them. Thereupon Curriden begun the purchase and went on to aid in organizing the company in Washington, becoming its treasurer, with Middleton as a trustee and Blackmore a trustee and consulting chemist. Curriden with an associate named Crandall urged by Middleton begun to invest money in the enterprise going on from payments to Middleton as the agent of the persons then owning the patents, of $1,500 in the beginning, until in the various efforts of the company to succeed he had paid in all about $40,000 and in connection with the failure of the company had used all his property.

Of the first payment of money to Middleton for Blackmore he retained $1,300, from $3,500. Of $20,000 paid by Curriden for rights purchased of Baltimore parties, Middleton received not less than $3,800. Of $7,500 paid for rights of Orr, Middleton received $500 and other valuable considerations.

Curriden thus becoming heavily distressed, broke down in dangerous sickness, resigned as treasurer and Middleton took possession of the company. No improvement coming, in money or health, Curriden made an agreement with the company by which upon the payment of certain notes on which he was liable, and on some of which he had been sued, he released all other claims. This agreement was only partially fulfilled and the plaintiff lost his whole fortune.

THE MOST ESSENTIAL MISREPRESENTATIONS.

The most essential misrepresentations made to Curriden were (Record, 8, 9):

a.

That Middleton was interested only as an attorney for selling the patents, expecting a moderate and reasonable fee, whereas he was otherwise directly interested in the patents and expected to receive personally a large portion of the moneys to be obtained from Curriden.

b.

That in carrying on the enterprise, deferred payments to be made could be met from sales of rights to use the patents coming from offers already made or where there were good reasons for being sure of sales already in sight, in various places specifically named—the amount reaching $50,950, all of which statements were substantially false.

c.

That the name of Chief Chemist Harvey W. Wiley could be used in promoting the new enterprise, whereas it had been agreed by the defendants that Wiley's name should not be made public or used in connection with a letter describing the invention, which he had given for a money consideration, for a special purpose only.

d.

That the patent rights covered a fluid newly discovered by Blackmore which was not merely a deodorizer or the creation of one odor to mingle with and disguise another

odor, but was a fluid which when used in the apparatus had germicide power which could change the nature of poisonous substances, destroy their unhealthfulness and by disinfecting them make them harmless; whereas in truth the fluid as used in the apparatus had no disinfecting or germicide power whatever but only an odor which might overcome other odors; and was utterly worthless for the real purposes for which it was intended to use and sell it, all of which facts all the defendants all the time well knew.

A Conspiracy to Defraud.

In the face of the foregoing misrepresentations, which on the demurrer, must be taken as having been made, the plaintiff's case on its merits may be said to rest upon the fact that all the acts of the defendants recited in the bill were parts of a conspiracy formed by them to deceive and defraud, by inducing him to purchase the patent rights and to organize a company to use and vend the same; that Curriden and Crandall were the dupes and victims of the conspiracy and were deluded agents and instruments of the defendants in organizing said company and in all the subsequent proceedings thereof; and that the company was itself an agency and instrumentality for fraud in all directions of the defendants, and especially of Middleton, for which he is personally responsible to the complainant and many other persons who have invested and lost money in connection with the patent rights. (Record, 9.)

The Defence Only a Mistaken Jurisdiction.

The only answer made to the case thus presented is that the plaintiff has mistaken his remedy, that he should have brought a suit at law and not a bill in equity to obtain a remedy for the wrongs done him by the conspiracy alleged. (Record. 11, 18.)

The dismissal of the bill in equity on demurrer in the court below involved no consideration of the equitable or other merits of the claim of the plaintiff against the three defendants on account of their alleged fraudulent conspiracy to deceive and despoil him, but the decision was made solely on the ground that it did not sufficiently appear that the plaintiff did not have his remedy, if any, in an action at law.

A Suggestion of the Statute of Limitations.

It is true that one judge below mentions an apparent reason for dismissing the bill—that "the misrepresentations appear to have been manifest to the plaintiff as early as 1905, certainly as early as 1906, when he made an arrangement with the corporation to be relieved of his liability upon his obligations"—the bill not being filed until 1910 and the period of limitations being three years. (Record, 24.)

This statement, however natural it may have seemed, was entirely a mistake—the plaintiff, although he had, while under deception and seriously sick, agreed to a settlement with the company which the defendant Middleton, having taken possession of its assets as a one-man corporation, failed to fulfill, had not, until after these occurrences, become fully informed and convinced of the deceptions practiced upon him by the defendants and three years had not elapsed from the time his right of action accrued.

Moreover, there is upon the bill no real question of the statute of limitations as such, but only whether the plaintiff has been guilty of laches under the rule laid down in Kirby vs. Lake Shore, 120 U. S., 130.

The plaintiff did not bring his suit in equity rather than at law because any period of limitations had run against

his claim but only because his counsel believed the equitable grounds for relief set forth in the bill entitled him to a remedy therein. He had not then discovered the extent to which courts in recent years had swung away from suits in equity in connection with the improved facilities for making suits at law effective.

To now affirm the decision of the Court below dismissing the bill and to apply to the plaintiff the statute of limitations in any suit at law he may bring would be most unjust. Fortunately the application of the new rule in equity No. 22 would prevent any such denial of a hearing of the merits of the plaintiff's claim.

Concise Repetition of Facts and Grounds for Relief in Equity.

The plaintiff submits that neither in his bill nor in any brief on a demurrer should he be required to state at length the complicated facts of fraud which entitle him to a remedy in equity and need not be charged and made into a declaration in law.

The plaintiff's counsel did not believe that a long and elaborate recital of facts which they knew and facts which they suspected, would be necessary to demonstrate that they were fairly entitled to have jurisdiction taken of their bill in equity.

But the plaintiff here repeats the averments which he believed would be more than sufficient.

IV.—Record, 13.

That in the progress of the deceits practiced upon him concerning the real ownership of the patents and rights thereunder, the alleged offers to buy rights to use the same, the prescribed non-user of Chief Chemist Wiley's letter and

the use of aromaform as a disinfectant and not merely as a deodorizer, the principal deceiver and chief conspirator was the defendant Middleton; that the organization of the American Automatic Disinfectant Company was only his creation of an agency for his purpose, and in its whole course was only a one-man corporation, designed, pressed forward and utilized by him to aid in deluding the complainant and others, inducing him and them to assume liabilities and obtaining from him and taking to himself the large sums of money which the complainant was led to advance.

V.—Record, 13.

That the facts set out are extremely complicated and that a proper investigation thereof would be long and difficult; that the books, papers, documents and records from which the facts can be ascertained passed into the possession of the said Middleton when he dropped the complainant from the board of directors of the American Automatic Disinfectant Company, and that an examination thereof is indispensable to enable any one to unravel the complications of facts bearing upon the question of the frauds alleged against the defendants.

VI.—Record, 14.

That while from such careful investigations as he has been able to make, with the evidence accessible to him, he has been led to believe and continues to believe the truth of all the foregoing averments and those of the original bill of complaint, and that the defendant Middleton has been guilty of such frauds and fraudulent representations as made him personally liable to the complainant for all his advancements, payments and losses in connection with the purchase of said patents and rights thereunder yet the com-

plainant was not and is not sufficiently sure of the facts to make him willing to begin an action at law and invoke a trial by jury; wherefore he determined to seek further enlightenment by means of disclosures to be required of the defendants Middleton, Blackmore and Orr.

VII.—Record, 14.

That he was duly advised by counsel whom he consulted that being in doubt whether the facts known to him would give him a complete right of action, based upon the alleged frauds committed by the defendants, and realizing that such facts and others connected therewith were complicated and ascertainable only from an examination of books and papers in the possession of the defendants, and by disclosures as aforesaid, therefore he was entitled to the assistance of a court of equity to obtain a disclosure by the defendants, in due course, of all pertinent facts and to obtain access to such books and papers and make an examination thereof, and entitled after and in connection with such disclosure and examination to have a full and accurate accounting made by the defendants concerning all complicated and fraudulent transactions which might be disclosed.

VIII.—Record, 14.

That the defendants ought to answer on oath thirty-four questions recited in the amendment to the bill.

The grounds upon which the plaintiff conceived that he was entitled to seek a remedy in equity were

I.

That the case was one of complicated fraud, the Aromaform Company being an agency of Middleton for victim-

izing his confidential friend the plaintiff; the whole of the corporation, its property, business and accounts, passing into the hands of Middleton and his co-conspirators, leaving the plaintiff sick, helpless and without a dollar in the world.

II.

That a discovery and a special accounting were needed in order to enable the plaintiff fully to ascertain and state his claim that he should be made whole by the defendant Middleton who had used the faith reposed in him to lead the plaintiff on to destitution.

III.

That the form of remedy would be doubtful until the facts should be fully disclosed, the assets ascertained and utilized, the number of victims known and their respective merits determined.

AUTHORITIES RELIED ON.

(1.)

Authorities as to jurisdiction in equity in cases of complicated fraud.

Story's Eq. Jur., Vol. 1, Sec. 184, *Ibid.*, Vol. 1, Sec. 437, page 466.

Ibid., Vol. 2, page 698, Section 1265: "The truth is, that courts of equity, in regard to fraud, whether it be constructive or actual, have adopted principles exceedingly broad and comprehensive, in the application of their remedial justice; and, especially, where there is any fraud touching property, they will interfere, and administer a wholesome justice, and sometimes, even a stern justice, in favor of innocent persons, who are sufferers by it, without

any fault on their own side. This is often done, by converting the offending party into a trustee and making the property itself subservient to the proper purposes of recompense by way of equitable trust or lien."

Ibid., Vol. 1, page 468, Sec. 439: "Accident, mistake, and fraud, are of an infinite variety in form, character, and circumstances; and are incapable of being adjusted by any single and uniform rule. Of each of them, one might say, *Mille trahit varios adverso sole colores.* The beautiful character, or pervading excellence, if one may so say, of Equity Jurisprudence, is, that it varies its adjustments and proportions, so as to meet the very form and pressure of each particular case, in all its complex habitudes."

Suits in equity allowed between all persons "standing in fiduciary relations to each other." See 1 Pomeroy, S. 179, S. 186. See 2 *Ibid.*, 955, 963. "Indeed all persons who occupy a position of trust and confidence, of influence and dependence in fact although perhaps not in law." See authorities in note.

"A person consulting an elder and distant relative or a confidential friend." Note 7 (G), page 1792. "A confidential adviser."

See Pomeroy, S. 957, in note. Smith vs. Kay, 7 H. L. Cas., 750. Lord Kingsdowne said that the equitable principle applied in all cases "in which confidence has been reposed and betrayed."

The case against Middleton is that through his deceit and fraud the whole enterprise became his and the American Automatic Disinfectant Company was his one-man corporation. Curriden was only his dupe and therefore his agent and subordinate. See Harvard Law Review, January, 1904, page 201. *In re* Carl Hirth, 1 Law Rep.; *In re* Slobodinsky (1903), 2 K. B., 517. Treasury Branch Div., 1889, pages 612, 618, 624.

(2.)

The details of fraud are not necessary to be stated in the bill. "Every bill must contain sufficient matter in itself to maintain the case of the plaintiff (Harrison vs. Nixon, 9 Peters, 483); but it need not allege or specially describe all the evidence which is to be put into the case, provided it contains allegations broad enough to cover the evidence relied on."

Nesmith vs. Calvert, 1 Wood & M., 34. Forms of Federal Practice—Loveland—Vol. 1, page 237.

(3.)

Cases where the need of discovery is a ground of jurisdiction. 1 Pomeroy, S. 223, 314, 299. Reynolds vs. Burgess, 71 N. H., 332.

(4.)

Cases where jurisdiction is taken in order to secure an adequate accounting. 1 Pomeroy, S. 186, 319. 4 *Ibid.*, S. 1420.

"Where there are circumstances of great complication and difficulties in the way of adequate relief at law." *Ibid.*, 1421. See Badger vs. McNamara, 123 Mass., 117. Gray, C. J. "Account so complicated that it can not be taken in an action at law."

(5.)

Equity not lost because only money relief is demanded. 1 Pomeroy, S. 178, page 214; 4 Pomeroy, S. 416; 5 Pomeroy, S. 11.

(6.)

AUTHORITIES AS TO STATUTE OF LIMITATIONS.

The ordinary limitation of actions at law is given in Sec. 1265, Ch. XLI, Code of D. C., but in Section 1640, Ch. LX,

it is provided that "nothing shall affect the operation or enforcement in the District of Columbia of the principles of equity."

In Kirby vs. Lake Shore R. R. Co., 120 U. S., 130, the U. S. Rule is stated:

> "Regard the cause of action as having accrued at the time the fraud was or should have been discovered and thus withhold from the defendant the benefit in the computation of time of the period during which he concealed the fraud."

Read Judge Harlan's remarks beginning, "Be that as it may," etc.

LAW REPORTS—MODERN AND ANCIENT, 270. TERM. MICH., 3, GEO. II, 1729.

WATLINGTON AND WILKINSON, & AL. WATLINGTON AND BRAND.

HOW FAR THE STATUTE OF LIMITATIONS IS A GOOD PLEA TO A BILL IN A COURT OF EQUITY.

> Canc. "These were two causes, wherein the defendants were charged with carrying on a fraud in 1720 by drawing people into a bubble, called the Orkney-Fishery. The bills were brought to have a discovery of this fraud, and the money refunded. The defendants in the first cause pleaded the statute of limitations in bar to the discovery; and by way of answer, set forth in particular, that there was no fraud. The defendant in the second cause set forth, that he was only cashier to the proprietors, and barely as to that part of the bill, which required him to refund the money the adventurers had put into his hands, pleaded the statute of limitations; and denied that he knew anything of

fraud or that he was one of the managers; and for answer said, that he was willing to make a discovery of any thing he knew, and ready to account, if the Court should be of opinion, that he ought to do so. The Solicitor General was counsel for the defendants in the first cause, and urged, that it was most known and certain, that if their had been no fraud suggested in the bill, the plaintiffs could not come into a court of equity and pray relief, when they had stayed too late for having any in the courts of law. And as to the foundation of Fraud, it was discovered from the very first, and there was equal reason, that a complaint of this sort should be confined to be made within the time limited by the statute, as any other. And this, he said, was clearly allowed in Lord Warrington's case, that was lately before the House of Lords and the judges required to attend in it. But the great debate in that case was, if a fraud should happen to be detected after six years, whether the party was too late to apply for relief. The House of Lords were indeed of opinion, that the party was not too late in that case; but the difficulty they had upon them in getting over that point, was a full argument that they well were satisfied, that he would be too late in the other. Lord Chancellor said, that this was a matter which well deserved some consideration; but thought clearly, that this plea could not be a bar to the plaintiff's requiring a discovery of the fraud; and then indeed it might be proper to consider whether the plaintiff knew of it so soon. as to have been obliged to have brought his bill before. Accordingly his Lordship ordered, that the plea should stand for an answer with liberty to except however to the plea of the defendant in the second."

Of course it is to be noted that this case was in the year 1729!

The cases of Tyler vs. Savage and Buzard vs. Houston.

The Court below appears to base its opinion upon its view of the decision in Buzard vs. Houston, 119 U. S., 347, which is thus stated: "Buzard vs. Houston is a strong authority for the proposition that where the only relief sought is a money decree for damages occasioned by fraud and deceit, the remedy at law is adequate and exclusive."

That proposition is clearly erroneous in the light of the later decision in Tyler vs. Savage, 143 U. S., 79, where although the only relief finally sought was a money decree for damages occasioned by fraud and deceit, the Court awarded relief by just such a decree because, by reason of the circumstances of the case, the remedy at law was not adequate and exclusive. The Court, in pointing out the difference between that case and the case of Buzard vs. Houston, indicated that the question of equitable jurisdiction turned on the nature and circumstances of the case and not on the particular nature of the relief or the form of the decree at last sought.

The case at bar is wholly unlike Buzard vs. Houston. In that case, by deceit, the defendant induced the plaintiffs to cancel their agreement with defendant and to accept in lieu thereof an assignment from him of his contract with an insolvent third party. There appeared to be no complicated scheme of fraud, no need of discovery, and no circumstances making it more difficult for the plaintiff to proceed at law than in equity; he simply had to go ahead with his original claim, and the Court found the legal remedy was "plain, adequate and complete." Yet even that decision was not unanimous. See the dissenting opinion of Mr. Justice Bradley.

In Tyler vs. Savage the plaintiff had by misrepresentation and fraud induced the plaintiff below to invest

$10,000 in the worthless stock of the corporation of which Tyler was president, and in order to make out her case she called on him to answer specific interrogatories just as was done in the case at bar. The final decree held Tyler individually liable for the $10,000, and required him to pay it to the plaintiff with interest.

That case and the case at bar are alike in all particulars bearing on the question of equitable jurisdiction. Even with the aid of the Code D. C., Sec. 1072, the plaintiff would not have a "plain, adequate and complete" remedy at law. The case is one in which complete justice may be obtained only in a court of conscience, where the defendant is required to answer fully under oath to the plaintiff's allegations and specific interrogatories, and where the chancellor may hear and consider all the testimony which the plaintiff may adduce, and may mould the decree in accordance with all the facts established by the proofs.

In Tyler vs. Savage the head note of Mr. Justice Blatchford's opinion was as follows:

> "A decree in a suit in equity found that T., an individual defendant, and the remaining assets of a corporation defendant, were liable to the plaintiff for the sum of $10,000 paid by him into the treasury of the company, at the instance of T., for a certificate of stock therein, which company was represented to him by T., who was its president, to be in a flourishing condition, when in fact it was insolvent; and distributed $176.24 as the remaining assets of the company, of which $13.24 went to the plaintiff as a credit on his claim for $10,000; and decreed that T. pay to the plaintiff $10,000, subject to a credit of the $13.24. There was no demurrer to the bill for multifariousness, and no objection taken in the court below for want of equity. The bill set out fraud in T., and that the $10,000 was due to the plaintiff by T., and the company, and required answers to interrogatories, which answers re-

ferred to the books of the company for information: Held; To support jurisdiction in equity, there were in the case discovery, account, fraud, misrepresentation and concealment; the objection to the jurisdiction was not taken in the court below; and the case was not one of a plain defect of equity jurisdiction, under Sec. 723 of the Revised Statutes."

The Court then cited Story's Eq. Jur., Secs. 64 K, 67, 184, 191; Jones vs. Bolles, 9 Wall., 364, and said:

"Under Section 723 of the Revised Statutes the remedy at law in order to exclude equity must be as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity."

Boyce's Executors vs. Grundy, 3 Peters, 210; Insurance Co. vs. Bailey, 13 Wall., 616.

Conclusion.

In the opinions of the courts below various points are mentioned for the purpose of sustaining the inference that there is no need of equity remedies in this case. Record, 19-24, 27-30.

These points are:

1. That no confidential relations in a *technical sense* are alleged.
2. That Middleton was not the plaintiff's attorney.
3. That there was no partnership.
4. No allegation of existing property representing money which the plaintiff ought to receive.
5. No effort to impress any property with a trust.
6. No requirement that the defendants should state what has been done with the money.
7. No rescission of any contract demanded.
8. No offer to turn over the stock certificate which the plaintiff has;

While the Courts say that in Tyler vs. Savage:

9. There was an *accounting* prayed for.
10. A movement to have the assets realized quickly.

11. A claim that the plaintiff's money paid in for stock should be made a debt of the one-man corporation.

12. An application for a *receivership* and

13. An application for an *injunction*.

All these thirteen objections, except the first three, can be fairly met by simply saying that everyone of the necessary or desirable conditions demanded can and naturally may and perhaps should come to appear in the course of the present case as it stands on the averments in the existing bill in equity.

There should be (13) an application for an injunction and (12) for a receivership, (11) a claim that the plaintiff's money should be made a debt, (10) a motion that the remaining assets should be realized quickly and (9) a full accounting by the defendants for all the moneys received by them in the progress of their imposture.

These five features of a suit in equity and also those suggested in points 4 to 8, inclusive, all fairly and naturally grow out of the suit in equity upon the pleadings as they stand, and any lack of such present averments does not weaken the plaintiff's right to maintain his suit in equity on the ground that he has not a remedy at law, plain, adequate and complete. In due time all these methods of an equitable remedy are likely to be asked for.

After all such due proceedings there can be an adjusting of the remedy to the exact wrong done—a fitting of the punishment to the crime.

The defendants' counsel are courteously requested to submit in their brief a form of declaration at law which they think would be a good one and it will perhaps be adopted if this case goes back to the courts below under Rule 22.

It is easy to claim in a declaration at law the $5,500 which went directly from the plaintiff's moneys to the defendant Middleton; it is not easy to frame exactly the

remedy for the complicated frauds by which he succeeded in getting from the plaintiff the additional $35,000 which was taken from him. Yet to do this seems fairly to be the duty of the counsel if a declaration can be drawn which will state a remedy plain, adequate and complete.

But the counsel for the despoiled plaintiff respectfully submits that his suit in equity on the present pleadings should be allowed to take its legitimate and just course.

WILLIAM E. CHANDLER,
LORENZO A. BAILEY,
WILLIAM L. CHAMBERS,
Counsel for the Appellant.

Filed January 8, 1914.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 152.

SAMUEL W. CURRIDEN, APPELLANT,

vs.

FRANK L. MIDDLETON, HENRY S. BLACKMORE, AND WILLIAM G. ORR.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

Statement of the Case.

This is an appeal from the judgment of the Court of Appeals of the District of Columbia affirming a decision of the Supreme Court of the District of Columbia, which court entered an order sustaining a demurrer to the amended bill filed in said court and dismissing said amended bill on the ground that the plaintiff, as alleged in said demurrer, had a plain, adequate and complete remedy at law. No service

was ever had upon the defendants Blackmore and Orr, who are therefore not before the court, and the demurrer having been interposed only by the defendant Middleton, the bill is to be considered as a bill against him alone.

The Court of Appeals, in affirming the decision of the lower court, disposed of only two grounds set up in the demurrer in the court below, to wit, that there was a complete remedy at law and that the bill could not stand alone as a bill for discovery merely. The Supreme Court of the District of Columbia, however, held that there was an additional ground for sustaining the demurrer and dismissing the bill, namely, that the proceeding was barred by the statute of limitations as set forth in section 1265 of the Code of the District of Columbia.

The bill as analyzed by the lower court discloses that the only relief sought is a money decree against the defendant, because of his alleged fraud and deceit, upon the faith of which the plaintiff made certain investments in a fluid called "Aromaform" and an apparatus by which said fluid could be used for disinfecting purposes. The investment of the plaintiff was made through the medium of a corporation which had been organized for the purpose of manufacturing and selling both the fluid and apparatus.

Assignment of Error.

While appellant has assigned several errors (R., 31), yet the same may be resolved into the single proposition that the court below erred:

In holding that the appellant had a plain, adequate and complete remedy at law as to the matters complained of in his amended bill.

ARGUMENT.

I.

Adequate Remedy at Law as to Substantial Relief Sought.

Analysis of the bill discloses that it is filed to recover damages growing out of alleged fraudulent misrepresentations made by the defendant Middleton, and incidentally seeks a discovery from him in respect of these misrepresentations.

The bill should not be permitted to stand in either case: first, because the plaintiff has a plain and adequate remedy at law, and, secondly, because as a bill of discovery merely it cannot stand, the information sought to be obtained thereby being equally available under ordinary legal process in an action at law.

It is manifest from a perusal of the bill that if the plaintiff should be ordered by this court to be reinstated in all his rights growing out of the alleged fraudulent misrepresentations of the defendant Middleton the *only relief he could have in this suit would be a decree for damages to be assessed by the same rules as in an action at law.*

> "The effect of the provisions of the Judiciary Act, as often stated by this court, is that whenever a court of law is competent to take cognizance of a right and has power to proceed to a judgment which affords a plain, adequate and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury."
>
> "In case of fraud or mistake a court of the United States will not sustain a bill in equity to obtain only a decree for the payment of money by way of damages, when the like amount can be recovered at law in an action sounding in tort or for money had and received."
>
> Buzard *vs.* Houston, 119 U. S., 347, 351, 352.
> Parkersburg *vs.* Brown, 106 U. S., 487, 500.
> Litchfield *vs.* Ballow, 114 U. S., 190.

> "If, as is more than once distinctly alleged, the object of the suit is to recover damages for an unlawful and fraudulent conspiracy to cheat Ambler out of his interests in the original invention which is the subject-matter of the controversy, the remedy is clearly at law, and not in equity."
>
> Ambler *vs.* Chateau, 107 U. S., 590.

One of the latest utterances of this court is to be found in the case of United States *vs.* Bitter Root Development Company, 200 U. S., 472, where the court said:

> "It is not necessary to cite many authorities for the proposition that where the main cause of action is of a legal nature, equity has no jurisdiction, provided the complainant has full and adequate remedy at law for the wrongs complained of."

Other authorities of this court directly in point are: Hipp *vs.* Babin, 19 How., 271, 278; Kramer *vs.* Cohn, 119 U. S., 355, 357; Whitehead *vs.* Shattuck, 138 U. S., 146; Scott *vs.* Neely, 140 U. S., 106, 110; Cates *vs.* Allen, 149 U. S., 451, 459.

The case of Tyler *vs.* Savage, 143 U. S., 79, is relied on by appellant, the plaintiff below, but as this court pointed out in the case of U. S. *vs.* Bitter Root Development Co., *supra,* there was in that case discovery, account, fraud, misrepresentation, and concealment; there was also an application for the appointment of a receiver to administer the assets of the corporation under the direction of the court and for an injunction restraining the company and its officers from managing or interfering with its affairs. From the foregoing it will be observed that the facts stated in the plaintiff's bill in the case at bar are entirely different from those supporting the equity jurisdiction in the case of Tyler *vs.* Savage.

The appellant in his brief (pp. 17, 18) concedes that the case at bar may be differentiated from the Tyler-Savage case, in that in the latter there was an application for an in-

junction, for a receivership, and a demand that the plaintiff's money should be made a debt of the corporation, and that the assets of the corporation should be realized quickly, in addition to an accounting of all the moneys received by the defendants. The only excuse offered by appellant in thus wholly failing to bring the averments of his bill within the principle of the Tyler-Savage case consists in a statement on page 18 of his brief:

> "In due time all these methods of an equitable remedy are likely to be asked for."

In making the foregoing statement, which practically concludes the case against him, the appellant loses sight of the fact that in the trial court he expressly stood upon his bill as amended, and cannot now be heard to change his cause of action by inserting jurisdictional averments that do not appear in his amended bill of complaint, which was dismissed for want of jurisdiction.

II.

The Bill Cannot be Maintained for Discovery Only.

Appellant urges *discovery* as a second ground upon which a court of equity may entertain jurisdiction of his bill, but it is significant that at the time he filed his bill, as set forth therein (R., 14)—

> "He was not and is not sufficiently sure of the facts to make him willing to begin an action at law and invoke a trial by jury."

And again (R., 14) he makes the astounding averment that—

> "He was duly advised by counsel whom he consulted that, being in doubt whether the facts known to him would give him a complete right of action, based upon the alleged frauds committed by the defend-

> ants, and realizing that such facts and others connected therewith were complicated and ascertainable only from an examination of books and papers in the possession of the defendants, and by disclosures as aforesaid, therefore he was entitled to the assistance of a court of equity to obtain a disclosure by the defendants, in due course, of all pertinent facts and to obtain access to such books and papers and make an examination thereof."

It is nowhere averred that he was ever denied access to the books and papers of the company, which he states in the bill (R., 9) to be in the possession and control of the defendant Middleton, nor is it anywhere charged that a demand was ever made for their inspection.

Section 1072 of the Code of the District of Columbia provides:

> "In an action at common law the court may, on motion, and on reasonable notice thereof, require the parties to produce books and writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might heretofore have been compelled to produce the same by the ordinary rules of proceeding in chancery."

And in this connection the learned justice at the trial below uses the following language (R., 24), which is quoted in part by the Court of Appeals in its opinion (R., 29):

> "Furthermore, it is strongly urged that the bill seeks a discovery. The answer made to this is, first, that such discovery as is asked for, is only incidental to such relief as might be had at law and is for that reason an insufficient ground; and in the next place, that a statute now existing enables the plaintiff to secure all the discovery he is asking for by proper process at law. Code, sec. 1072. There seems to be some conflict in the authorities touching the first of these propositions, but touching the second proposition, the later cases, particularly those in the

> Supreme Court of the United States, seem to be with the defendant. Courts of equity are not inclined to maintain a bill merely for purposes of discovery at the present day where the statutes have afforded ample means of procuring the evidence in an action at law; and this seems to be the sound view of the matter. The defendant is entitled under the Constitution to a trial by jury of matters strictly cognizable at law. In the present case the plaintiff himself states that he does not feel sure enough of his ground to institute an action at law, and for that very reason wishes to know what the defendant will say. This is an admission that the present bill is an attempt to get the defendant committed upon various questions of fact before instituting legal proceedings, although the plaintiff does not pretend that he is ignorant of any of the matters of fact which he makes the basis of the bill."

The correctness of the foregoing principles announced by the learned trial court is abundantly established in the case of United States *vs.* Bitter Root Development Company, *supra*, where the complainant invoked the jurisdiction of a court of equity for the wrongful cutting, carrying away and conversion of timber from the public domain upon the theory that the remedy at law was inadequate because of the various devices resorted to by the principal tort-feasor by way of covering up its tracks through the organization of different corporations, thus rendering it more difficult for the complainant to prove its case. In that case the opinion, written by Mr. Justice Peckham, laid down the following principles on pages 472 and 473, which are singularly pertinent to the averments of the bill in the case at bar:

> "The principal ground upon which it is claimed that the remedy at law is inadequate is really nothing more than difficulty in proving the case against the defendants. The bill shows that whatever was done in the way of cutting the timber and carrying it away was done by the defendants as tort-feasors, and the various devices alleged to have been resorted to by the

> deceased, Daly, by way of organizing different corporations, in order to, as alleged, cover up his tracks, and to render it more difficult for the complainant to make proof of his action, does not in the least tend to give a court of equity jurisdiction on that account. It is simply a question of evidence to show who did the wrong and upon that point the fact could be ascertained as readily at law as in equity. The complainant is entitled in an action at law to an inspection of the books and records of these various corporations, and it has the same power to obtain the facts therefrom in that action as it would have in this suit in equity."

Discovery may not be claimed in a bill to save the expense or uncertainty in the proof of the case and may not be used as a ground of equity jurisdiction for ulterior purposes, in which case it would be sufficient to bring any case, proper only for a court of law, into equity to call for the discovery of facts from the defendant.

> "The American courts in view of the foregoing *reductio ad absurdum* have laid down the principle that a party going into equity for discovery alone *must allege in his bill and verify the allegation by affidavit,* that he has no other means of proving his case."
>
> Gelston *vs.* Hoyt, 1 Johns. Ch., 543.
> Bank of U. S. *vs.* Biddle, 3 Pars. Ch., 31.
> Lyons *vs.* Miller, 6 Gratt., 427, 428.

III.

The Action is Barred by the Statute of Limitations and the Appellant Has Lost His Remedy Even at Law by Reason of His Own Laches.

A third ground for sustaining the demurrer and the dismissal of the bill was found by the trial court (R., 24) in section 1265 of the Code of the District of Columbia, which

fixes the period of limitations upon actions of this character at three years, the court holding that this statute is a bar to a proceeding at law where it appears that the alleged fraud was discovered more than three years before the beginning of the action.

The case of Kirby *vs.* Lake Shore R. R. Co., 120 U. S., 130, 136, cited by the appellant in support of his contention, decided only that time will not run in favor of the defendant until the discovery of the fraud.

Taking the view most favorable to the plaintiff upon this point, it appears in paragraphs 13 and 14 of the bill (R., 5, 7) that the plaintiff had knowledge of the alleged fraud of the defendant in January, 1906, whereas the bill was not filed (R., 1) until April 4, 1910, nearly a year after the claim had been barred by limitations.

If the appellant seeks to avoid the operation of the statute on the ground that the alleged fraud was not discovered by him until after that time, the bill wholly fails in this respect, because there is no definite allegation as to when the fraud was discovered. The inference, however, is conclusive that it was prior to January 16, 1906, at which time appellant concluded an arrangement with the company whereby the latter undertook to exonerate him from his liability existing at that time. Taking this latter date as the time when the alleged fraud was discovered, more than three years elapsed before the filing of the bill.

> "Equitable powers will not be exercised to discover whether one has been wronged, when, with full knowledge of the facts, he has allowed the bar of the statute to arise, and has slept upon his rights until such a situation has arisen as to render it inequitable to afford him relief."
>
> Baker *vs.* Cummings, 169 U. S., 189, reversing 4 App. D. C., 230, and 8 App. D. C., 515.

"If it appear on the face of the pleadings that the

claim is barred by the statute of limitations, the defect may be taken advantage of by demurrer."

Mercantile National Bank *vs.* Carpenter, 101 U. S., 567.
Rhode Island *vs.* Massachusetts, 15 Pet., 233.
Coddington *vs.* Penn., &c., R. Co., 103 U. S., 409.
Kindall *vs.* U. S.. 107 U. S., 123.
Chenning Canal Bank *vs.* Lowery, 93 U. S., 72.

So with laches.

Spiedel *vs.* Henrici, 120 U. S., 377.
Bryan *vs.* Kales, 134 U. S., 126.
Lansdale *vs.* Smith, 106 U. S., 391.

It is manifest from appellant's brief that in his own judgment there is no ground upon which jurisdiction of an equity court can be maintained. On pages 1 and 2 of his brief the following statement appears:

> "The appellant's counsel, who have only recently fully realized the growing disposition of trial courts to discourage suits in equity, which seems to almost change the rule that such a suit may be brought where there is not at law a remedy plain, adequate and complete, to a rule that such a suit shall not be brought if by any possibility a remedy can be had in a suit at law, hereby state that they desire, if necessary, to avail their client of the privilege given by the new equity 'Rule of Practice for the Courts of Equity No. 22,' and to have his case transferred to the law side of the court below and there proceeded with. Rather than be barred by the statute of limitations, if the full conclusion of the courts below is sustained, they will endeavor to maintain their claim by so framing issues at law as to entitle them to a recovery."

Again appellant states on pages 6 and 7 of his brief as follows:

> "The plaintiff did not bring his suit in equity rather than at law because any period of limitations had run against his claim, but only because his counsel believed the equitable grounds for relief set forth in the bill entitled him to a remedy therein. *He had not then discovered the extent to which courts in recent years had swung away from suits in equity in connection with the improved facilities for making suits at law effective.*"

It is not apparent to the appellee how appellant can rely upon equity rule No. 22 as promulgated by this court on November 4, 1912, for the reason that such rules by their terms apply to procedure in courts of equity and not to procedure in appellate courts, and particularly in this court. This conclusion is also apparent from the language of equity rule No. 81, which provides that said rules shall—

> "govern all proceedings in cases then pending or thereafter brought, save that where in any then pending cause an order has been made or act done which cannot be changed without doing substantial injustice, the court may give effect to such order or act to the extent necessary to avoid any such injustice."

It is manifest, therefore, first, that rule 22 invoked by the appellant has no application to the case at bar, and, secondly, that to invoke the same, in any event, would do an injustice to the appellee, for the reason that the application of the rule is invoked for the first time in this court, whereas the judgment of the Court of Appeals of the District of Columbia affirming the decree of the Supreme Court of the District of Columbia was passed on December 4, 1911, more than a year before the aforesaid equity rules became effective, which was on February 1, 1913.

It is therefore respectfully submitted that the judgment of the Court of Appeals of the District of Columbia should be affirmed.

E. HILTON JACKSON,
Attorney for the Appellee.

CURRIDEN *v.* MIDDLETON.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 152. Submitted March 4, 1914.—Decided March 16, 1914.

The proper remedy for damages caused by fraud and deception is an action at law. *Buzard* v. *Houston*, 119 U. S. 347.

Mere complication of facts alone and difficulty of proof are not a basis for equity jurisdiction. *United States* v. *Bitter Root Development Co.*, 200 U. S. 451.

An action in the Supreme Court of the District of Columbia commenced on the equity side of the court cannot be transferred to the law side of that court under Equity Rule 22. That rule has no application.

37 App. D. C. 568, affirmed.

THE facts are stated in the opinion.

Mr. William E. Chandler, Mr. Lorenzo A. Bailey and *Mr. William L. Chambers* for appellant:

For authorities as to jurisdiction in equity in cases of complicated fraud see 1 Story's Eq. Jur., §§ 184 and 437 *et seq.*, 2 *Id.*, § 1265.

Suits in equity are allowed between all persons standing in fiduciary relations to each other. 1 Pomeroy, §§ 179, 186; 2 *Id.*, 955–963; *Smith* v. *Kay*, 7 H. L. Cas. 750.

The case is that through defendant's fraud the whole enterprise became his and the company was his one-man corporation. Plaintiff in error was only his dupe and therefore his agent and subordinate. See Harvard Law Review, Jan., 1904, p. 201; *Re Slobodinsky* (1903), 2 K. B. 517; Treasury Branch Div., 1889, pp. 612, 618, 624.

The details of fraud are not necessary to be stated in the bill. *Nesmith* v. *Calvert*, 1 Wood & M. 34; 1 Loveland, Forms of Federal Practice, p. 237.

For cases where the need of discovery is a ground of jurisdiction, see 1 Pomeroy, §§ 223, 299, 314; *Reynolds* v. *Burgess*, 71 N. H. 332.

For cases where jurisdiction is taken in order to secure an adequate accounting, see 1 Pomeroy, §§ 186, 319; 4 *Id.*, §§ 1420, 1421; *Badger* v. *McNamara*, 123 Massachusetts, 117.

Equity is not lost because only money relief is demanded. 1 Pomeroy, § 178; 4 *Id.*, § 416; 5 *Id.*, § 11.

The ordinary limitation of actions at law is given in § 1265, c. XLI, Code of Dist. Col., but in § 1640, c. LX, it is provided that nothing shall affect the operation or enforcement in the District of Columbia of the principles of equity. *Kirby* v. *Lake Shore R. R. Co.*, 120 U. S. 130; *Watlington* v. *Watlington*, Law Rep., Modern and Ancient, 270, Term. Mich., 3 Geo. II, 1729.

Tyler v. *Savage*, 143 U. S. 79, and *Buzard* v. *Houston*, 119 U. S. 347, on which the court below appears to base its opinion, are inapplicable to this case.

Nearly all the objections to permitting a suit in equity can be fairly met by simply saying that every one of the necessary or desirable conditions demanded can and naturally may and perhaps should come to appear in the

course of the present case as it stands on the averments in the existing bill in equity.

Any lack of present averments does not weaken the plaintiff's right to maintain his suit in equity on the ground that he has not a remedy at law, plain, adequate and complete. In due time all these methods of an equitable remedy are likely to be asked for.

After due proceedings there can be an adjusting of the remedy to the exact wrong done.

Mr. E. Hilton Jackson for appellees.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity against the defendant Middleton and two others not served, to which Middleton demurred. The demurrer was sustained and the bill dismissed by the Supreme Court of the District and the decree was affirmed by the Court of Appeals. 37 App. D. C. 568. The allegations in brief are that Middleton was a patent lawyer and personal friend of the plaintiff, that he brought to the plaintiff's attention a patent fluid and apparatus representing them to be valuable, with details of fact confirming the statement, and representing that Middleton was acting as agent of the patentees; that the plaintiff relying upon the representations, paid money and incurred obligations, amounting in all to some forty thousand dollars, all he had, for purchase of the patent rights, with an agreement that a company should be formed to work them; that a company was formed, but that it turned out that the fluid and apparatus were worthless, that Middleton was interested in the patent, and that his representations were false. It is alleged further that Middleton got complete control of the company, that an arrangement was made with it by which the company was to assume and pay outstanding notes of the plaintiff but that it failed to do so and is now

hopelessly insolvent; that all Middleton's acts were parts of a conspiracy to defraud the plaintiff, and that Middleton has all the books and papers of the company needed to prove the fraud. The prayers are for discovery and a decree that the defendants "shall make due restitution [of his property] to the complainant by paying to him the amounts of money by him paid out as aforesaid," and for general relief.

As there is a prayer for final relief the prayer for discovery must stand or fall with that, at least in a case like the present; there is no need to consider whether or how far bills for discovery alone have been displaced by the powers now given in actions at law. The relief sought is simply a decree for damages—for a large part of the moneys paid and obligations incurred were paid and incurred to others than Middleton, so that although the word restitution is used there is no attempt to rescind, to follow a specific fund or to establish a trust. Being a suit for damages the proper remedy is an action at law, as was held below. *Buzard* v. *Houston*, 119 U. S. 347. It is said that the facts are complicated, but they are not so on the allegations of the bill, which merely disclose a series of acts alleged to have been parts of the plan to deceive, and further, mere complication of facts alone and difficulty of proof are not a basis of equity jurisdiction. See *United States* v. *Bitter Root Development Co.*, 200 U. S. 451, 472. It now is asked that if the suit cannot be maintained in equity it may be transferred to the law side and under Equity Rule 22; but that rule has no application to the case. Rev. Stat., § 913. D. C. Code, (act of March 3, 1901, c. 854), § 85. 31 Stat. 1189, 1202.

Decree affirmed.